

11

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  
DOMESTIC RELATIONS DIVISION**

**IN RE THE MARRIAGE OF:  
HOPE DUNCAN HARBIN**

**AND**

**MICHAEL G. HARBIN, JR.  
Wife and Husband.**

)  
)  
)  
)  
)

**CASE NO. DR-2001-1310**

**RE-NOTICE OF TAKING DEPOSITION DUCES TECUM**

**TO: MICHAEL G. HARBIN, JR.**  
c/o Floyd Minor  
MINOR & OLSZEWSKI, LLC  
P.O. Box 164  
Montgomery, AL 36101-0164

Please take notice that on April 2, 2002, beginning at 9:00 a.m., at the law offices of Copeland, Franco, Screws & Gill, P.A., 444 South Perry Street, Montgomery, Alabama, the Wife, Hope Duncan Harbin, will take the deposition of the Husband, Michael G. Harbin, Jr., upon oral examination before an officer authorized by law to administer oaths, and the said depositions will continue from day to date until completed. That the Husband is hereby requested to produce for inspection and copying at the time and place of said deposition the following documentation.

That the Husband shall, pursuant to Rule 30(b)(5), *Alabama Rules of Civil Procedure*, produce and permit the Wife and her counsel to inspect and to copy each of the following documents which are in the Husband's possession, custody or control, or in the possession, custody or control of any business entity in which the Husband has an interest and which are, or can be made, available to the Husband by any person or business entity.

These requests are continuing in character so as to require you to file supplemental

EXHIBIT  
# 11

responses if you obtain further or different information before trial.

1. Copies of any and all documents related to M&M Properties, LLC, including but not limited to the following:

- A. 1998 income tax return and depreciation schedule
- B. 1999 income tax return and depreciation schedule
- C. 2000 incomes tax return and depreciation schedule
- D. Copy of the LLC Agreement
- E. A detail of the transactions creating M&M Properties, LLC explaining how M&M Properties acquired the land and building and from whom M&M Properties acquired the land and building, including but not limited to sales contracts, closing statements, and all other relevant documents regarding the acquiring of the land and building by M&M Properties, LLC.

2. Copies of any and all documents related to RESIA, including but not limited to the following:

- A. 1996 tax returns
- B. 1997 tax returns
- C. 1998 tax returns
- D. 1999 tax returns
- E. 2000 tax returns

3. Copies of any and all documents relating to Harbin's, Inc., including but not limited to the following:

- A. 1998 tax return and depreciation schedule
- B. 1999 tax return and depreciation schedule

C. 2000 tax return and depreciation schedule

4. Copies of any and all 1041s filed on behalf of the Estate of Michael G. Harbin, Sr.

5. A detailed list of all assets distributed out of the Estate of Michael G. Harbin, Sr., for the benefit of Michael Harbin and a detailed explanation as to the whereabouts of said assets and/or the current form of said assets.

6. Copies of any and all of the internally prepared financial statements for Harbin-Stern Bros., LLC at December 31, 2001, and for the twelve (12) month period ending December 31, 2001.

7. Copies of the actual deposit slips and copies of the items making up the amounts included in the deposits for the following deposits into the personal account of Michael Harbin:

February 8, 2000 deposit in the amount of \$8,391.50  
February 17, 2000 deposit in the amount of \$10,000.00  
February 17, 2000 deposit in the amount of \$240.94  
March 9, 2000 deposit in the amount of \$3,737.53  
March 15, 2000 deposit in the amount of \$2,500.00  
March 22, 2000 deposit in the amount of \$18,224.00  
March 30, 2000 deposit in the amount of \$1,335.14  
April 10, 2000 deposit in the amount of \$1,429.22  
April 17, 2000 deposit in the amount of \$22,309.20  
April 24, 2000 deposit in the amount of \$6,711.00  
May 4, 2000 deposit in the amount of \$2,739.36  
May 25, 2000 deposit in the amount of \$4,264.94  
June 7, 2000 deposit in the amount of \$1,524.85  
July 13, 2000 deposit in the amount of \$812.79  
July 13, 2000 deposit in the amount of \$71.92  
July 28, 2000 deposit in the amount of \$36.77  
August 4, 2000 deposit in the amount of \$1,415.00  
August 18, 2000 deposit in the amount of \$71.92  
September 6, 2000 deposit in the amount of \$68,894.00  
October 2, 2000 deposit in the amount of \$75.00  
October 10, 2000 deposit in the amount of \$292.53  
October 11, 2000 deposit in the amount of \$2,713.00  
November 8, 2000 deposit in the amount of \$116.65  
November 9, 2000 deposit in the amount of \$8,215.00  
December 13, 2000 deposit in the amount of \$150.21

December 22, 2000 deposit in the amount of \$2,850.63  
December 27, 2000 deposit in the amount of \$1,000.00  
January 2, 2001 deposit in the amount of \$10,000.00  
January 4, 2001 deposit in the amount of \$3,924.16  
January 5, 2001 deposit in the amount of \$250.00  
January 12, 2001 deposit in the amount of \$3,000.00  
January 17, 2001 deposit in the amount of \$16,800.00  
January 26, 2001 deposit in the amount of \$84.00  
February 13, 2001 deposit in the amount of \$1,002.15  
February 16, 2001 deposit in the amount of \$3,000.17  
February 26, 2001 deposit in the amount of \$12,581.62  
March 2, 2001 deposit in the amount of \$300.79  
March 7, 2001 deposit in the amount of \$676.00  
March 8, 2001 deposit in the amount of \$4,700.00  
March 12, 2001 deposit in the amount of \$4,981.00  
March 14, 2001 deposit in the amount of \$1,352.00  
April 3, 2001 deposit in the amount of \$3,500.00  
April 6, 2001 deposit in the amount of \$815.75  
April 6, 2001 deposit in the amount of \$8.09  
April 10, 2001 deposit in the amount of \$818.50  
May 14, 2001 deposit in the amount of \$30.74  
June 5, 2001 deposit in the amount of \$543.20  
June 8, 2001 deposit in the amount of \$147,736.85  
July 13, 2001 deposit in the amount of \$648.27  
July 16, 2001 deposit in the amount of \$211.75  
July 20, 2001 deposit in the amount of \$147,736.85  
August 3, 2001 deposit in the amount of \$10,481.00  
August 17, 2001 deposit in the amount of \$240.00  
August 24, 2001 deposit in the amount of \$2,703.05  
August 28, 2001 deposit in the amount of \$15,000.00  
September 5, 2001 deposit in the amount of \$7,400.00  
September 9, 2001 deposit in the amount of \$14,000.00  
October 12, 2001 deposit in the amount of \$4,452.35  
October 16, 2001 deposit in the amount of \$400.00  
October 17, 2001 deposit in the amount of \$25.00  
November 9, 2001 deposit in the amount of \$20,150.00  
January 11, 2002 deposit in the amount of \$1,000.00



**JOHN A. HENIG, JR. (HEN019)**  
*Attorney for Hope Duncan Harbin*

**OF COUNSEL:**

**COPELAND, FRANCO, SCREWS & GILL, P.A.**

P.O. Box 347

Montgomery, AL 36102-0347

(334) 834-1180

**CERTIFICATE OF SERVICE**

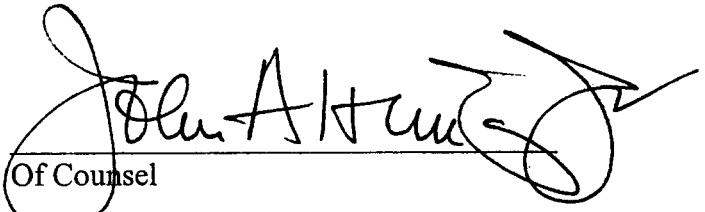
I hereby certify that a copy of the above and foregoing pleading has been served upon the following listed persons by placing a copy of the same in the United States mail, postage prepaid and properly addressed, this the 12<sup>th</sup> day of March, 2002.

Floyd Minor, Esq.

MINOR & OLSZEWSKI, L.L.C.

P.O. Box 164

Montgomery, AL 36101-0164

  
Of Counsel

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 202

- 1 Q. And for what purpose was that?
- 2 A. This money was to be earmarked for a
- 3 \$300,000 project that we had, and we stuck
- 4 it in a separate account, my account, so
- 5 that we wouldn't have the money in our
- 6 operating account so that we would spend it.
- 7 It had to be -- We segregated it.
- 8 Q. "We" deposited it into your account. Who is
- 9 the we that deposited it into your account?
- 10 A. Well, me. I did.
- 11 Q. Okay. So we is you.
- 12 A. We, me.
- 13 Q. Did you discuss depositing it into this
- 14 personal account with anybody at
- 15 Harbin's-Stern Brothers?
- 16 A. Yes.
- 17 Q. With whom?
- 18 A. Mike Behrman.
- 19 Q. And he approved that.
- 20 A. Sure.
- 21 Q. And your AmSouth account is an account that
- 22 earns interest, does it not?
- 23 A. Yes, sir.

Page 203

- 1 Q. When you wrote the check back out, did you
- 2 repay Harbin-Stern Brothers the interest
- 3 that was earned on the money while it was in
- 4 your account?
- 5 A. No, I did not calculate that.
- 6 Q. That was a deposit at a posting date of June
- 7 the 8th. Again on July the 20th, the next
- 8 month, there appears to be another deposit
- 9 of 147,700 and some-odd dollars again drawn
- 10 on an Alfa check to Harbin's; is that
- 11 correct?
- 12 A. Yes, sir.
- 13 Q. And is that a --
- 14 A. Yes, sir.
- 15 Q. -- the same explanation as before?
- 16 A. Yes, sir.
- 17 Q. And is that a check that you discussed with
- 18 Michael Behrman before depositing it into
- 19 your personal account?
- 20 A. Yes, sir.
- 21 Q. And had his approval and understanding.
- 22 A. Correct.
- 23 Q. And did you again just pay back to

Page 204

- 1 Harbin-Stern Brothers the exact amount and
- 2 not calculate the interest that was earned
- 3 on it?
- 4 A. That's correct.
- 5 Q. What is this cash in that occurred with the
- 6 same deposit?
- 7 A. I don't think that's mine because up here
- 8 you can see there's no cash in.
- 9 Q. Right.
- 10 A. That's somebody else's.
- 11 Q. Okay. That's not part of your account.
- 12 A. No, sir.
- 13 Q. Again, Harbin-Stern Brothers in December of
- 14 '01 is writing you a check in the amount of
- 15 4,452, and I assume -- and this time it's
- 16 some-odd cents. Is this again repayment of
- 17 the monies you advanced Harbin-Stern
- 18 Brothers?
- 19 A. No, sir, that's a gross payroll check.
- 20 Q. Okay. This is a check from a Fred Winham or
- 21 Winharm, d/b/a Florida Antique Mall.
- 22 A. Yes, sir.
- 23 Q. What is he purchasing from you?

Page 205

- 1 A. He purchased a player piano.
- 2 Q. Was this part of the antiques that was in
- 3 the separate business or was this --
- 4 A. No, sir. That was a player piano that I
- 5 acquired ten, twelve years ago, and I sold
- 6 it on eBay.
- 7 Q. Tell me of this check from Richard and
- 8 Margaret Brown.
- 9 A. That was for furniture from that Eclectic
- 10 Imports.
- 11 Q. And the next check is from John Goodwyn
- 12 Gallion to Hope Harbin.
- 13 A. Yes, sir.
- 14 Q. And it's deposited into your personal
- 15 account?
- 16 A. Yes, sir.
- 17 Q. Did Hope endorse that check?
- 18 A. She would have had to. I'm --
- 19 Q. Next is a check from Principal Life
- 20 Insurance Company to you on September 1 of
- 21 2000 in the amount of \$45,000. Tell me of
- 22 that check.
- 23 A. That's my 401(k) money.

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 198

Page 200

1 Harbin in the amount of \$10,000.  
 2 A. Yes, sir.  
 3 Q. And what was that for, please?  
 4 A. I needed money to pay the bills around the  
 5 house.  
 6 Q. That's your testimony as to the reason for  
 7 drawing it August the 28th of '01.  
 8 A. I'm reasonably sure. You have my bank  
 9 statements, so without being able to  
 10 compare, I can't give you a definitive  
 11 answer.  
 12 Q. Mr. Harbin, explain the deposit on September  
 13 the 5th of '01 to me, please.  
 14 A. \$5,000, payment on 401(k) note, cash in of  
 15 2,400, total of 7,400.  
 16 Q. What is the payment on the 401(k) note?  
 17 A. That's the 401(k) money that I borrowed to  
 18 put into the company.  
 19 Q. From whom did you borrow it?  
 20 A. My 401(k), my retirement money.  
 21 Q. So Harbin's, Inc., which in September of '01  
 22 was a dormant corporation, correct --  
 23 A. Explain dormant.

1 Q. Even if it was Harbin-Stern Brothers, why  
 2 would they be repaying you?  
 3 A. For the money that I put into the company.  
 4 Q. Again, this is part of the repayment of the  
 5 43,000?  
 6 A. Yes, sir. Payment on 401(k) note.  
 7 Q. Okay. And the cash, \$2,400 cash.  
 8 A. That was a refund of a -- of a -- for lack  
 9 of a better word, of a pyramid scheme that  
 10 was brought up from Mobile to Montgomery.  
 11 And I had given 2,400 or \$2,500 to an  
 12 individual, and subsequently the thing went  
 13 bust, but we were able to refund all our  
 14 money.  
 15 Q. Is that Jackie Parks' stepfather or the guy  
 16 who's married to Jackie Parks' mother?  
 17 A. Huh?  
 18 Q. Is he involved in this?  
 19 A. No. Winton Blount got me involved in this.  
 20 Q. Winton Blount.  
 21 Did Winton Blount hand you \$2,400 in  
 22 cash?  
 23 A. No.

Page 199

Page 201

1 Q. I mean, it had no activity, no business  
 2 activity whatsoever, Harbin's, Inc.  
 3 A. That's correct.  
 4 Q. -- had a bank account that had at least  
 5 \$5,000 in it.  
 6 A. That's correct.  
 7 Q. Do you know what the bank balance is in  
 8 Harbin's, Inc., today?  
 9 A. I do not. This account has been -- This  
 10 account has been renamed Harbin-Stern  
 11 Brothers. I think we're just still using  
 12 the same checks.  
 13 Q. With Sterling Bank?  
 14 A. That's correct.  
 15 The -- Our credit card charges from  
 16 American Express for the company goes into  
 17 Sterling Bank.  
 18 Q. All right. But why is Harbin's, Inc.,  
 19 writing Michael Harbin a check for \$5,000?  
 20 A. Like I said, Harbin's, Inc. -- this account  
 21 has been renamed Harbin-Stern Brothers, and  
 22 we're still using the old checks without  
 23 buying new ones.

1 Q. Who handed you \$2,400 in cash?  
 2 A. It came out of Texas. The name of the  
 3 organization was Life Without Debt, and it  
 4 was headquartered in Texas. And the money  
 5 came to me from Life Without Debt in Texas  
 6 in cash.  
 7 Q. Twenty-four \$100 bills?  
 8 A. Exactly, taped and wrapped.  
 9 Q. Through the U.S. Mail?  
 10 A. Through the U.S. Express Mail.  
 11 Q. Okay. The next check is a deposit. The  
 12 check is from Alfa Financial Corporation, a  
 13 check in the amount of 147,000 some-odd  
 14 dollars that's deposited into your personal  
 15 bank account.  
 16 A. Uh-huh (positive response).  
 17 Q. The check is made to Harbin's. Is that a  
 18 check that is in payment of a debt from Alfa  
 19 to Harbin's-Stern Brothers?  
 20 A. Yes, sir.  
 21 Q. And it's deposited into your personal  
 22 account?  
 23 A. That's correct.

*Did you record  
as income?*



April 2, 2002

## Deposition of Michael Harbin (Vol. II)

Page 206

- 1 Q. That's the money you pulled out of your  
2 401(k) plan and put in the company, and they  
3 were repaying you.  
4 A. Yes, sir.  
5 Q. April 17th, 2000, there's a check from  
6 Retail Enhancement Services, Inc., in the  
7 amount of \$22,309.20, and it says a 1999 tax  
8 distribution?  
9 A. Yes, sir.  
10 Q. What is that? Is that a tax refund or --  
11 A. That's to cover the income tax due on the  
12 profit.  
13 Q. So '99 was a profitable year for Retail  
14 Enhancement?  
15 A. Yes, sir.  
16 Q. There's a SouthTrust Bank check dated  
17 February the 8th of 2000 in the amount of  
18 \$8,000. Are those loan proceeds?  
19 A. I don't recall.  
20 Q. Is there any other reason that SouthTrust  
21 Bank would have been writing a check to the  
22 order of Michael G. Harbin, Jr., \$8,000?  
23 A. Does that say name of remitter? I can't

Page 207

- 1 read it.  
2 Q. I think it might, but I can't read it  
3 either. That's why I asked you what it  
4 could be.  
5 A. I don't recall. I had a -- I don't recall.  
6 Q. There's a check here from Matt Rainer. Is  
7 that a rental check?  
8 A. Yes, sir.  
9 Q. Who is Revest?  
10 A. They're a company in Atlanta.  
11 Q. What do they do?  
12 A. They buy and sell Steelcase furniture.  
13 Q. Why would their check made payable to  
14 Harbin's, Inc., be deposited into your  
15 account, your personal account?  
16 A. I believe that was a refund for work that we  
17 did with them in '99.  
18 Q. Which Harbin's, Inc., did.  
19 A. Yes, sir.  
20 Q. And it was income that Harbin's, Inc., had  
21 earned in '99.  
22 A. Correct. Well, I guess you could classify  
23 it as income.

Page 208

- 1 Q. Again, then, why would it be deposited into  
2 your personal account and not into the  
3 corporate account?  
4 A. Because Harbin's, Inc., was pretty much  
5 dormant in '99 -- after '99.  
6 Q. But still had some payments that it  
7 received.  
8 A. Correct.  
9 Q. And you used those as your own because you  
10 were -- you and your sister were the sole  
11 stockholders of Harbin's, Inc.  
12 A. Correct.  
13 Q. And so when a check came, rather than  
14 deposit it into a dormant checking account,  
15 you just put it in your own account.  
16 A. It would appear so.  
17 Q. Do you know how it was treated for income  
18 tax purposes?  
19 A. I don't.  
20 Q. Do you know whether or not it's reflected on  
21 your personal income tax return?  
22 A. I don't.  
23 Q. Do you have any recollection of having

Page 209

- 1 reflected it on your personal return?  
2 A. I don't.  
3 Q. That's all part of a transaction dated March  
4 9th of 2000, correct?  
5 A. Yes, sir.  
6 Q. On February the 17th of 2000, Retail  
7 Enhancement Services, Inc., is writing you a  
8 check for \$10,000.  
9 A. Yes, sir.  
10 Q. And what was that for?  
11 A. I believe that was just an advance.  
12 Q. Do you recall ever repaying it?  
13 A. I don't.  
14 Q. Did you ever treat that as income?  
15 A. I don't recall.  
16 Q. You don't recall whether or not you treated  
17 it as income or whether or not you did not  
18 treat it as income? Which is it?  
19 A. I didn't handle the payroll processing of  
20 our company, so -- and without my tax  
21 returns in front of me, I wouldn't --  
22 Q. Well, let me ask you this, Mr. Harbin.  
23 A. All right.

Deposition of Michael Harbin (Vol. II)

April 2, 2002

<p style="text-align: center;">Page 266</p> <p>1 Q. No, no. My question was, if you had listed 2 such a site, would you recall that? 3 A. If I had listed a site, I would think I'd be 4 able to recall it. 5 Q. And it's your testimony that you have -- 6 that you just -- to your knowledge, you've 7 never listed any sites in your favorites 8 section. 9 A. Not that I recall, no. 10 Q. And if you can't recall one, you certainly 11 would be able to recall multiple 12 pornographic sites listed in your favorites 13 section, would you not? 14 A. Say that again, please. 15 Q. You would be able, would you not, to recall 16 if you had multiple pornographic sites under 17 your favorites category? 18 A. If I had recorded multiple sites, would I be 19 able to recall that. 20 Q. Yes. 21 A. In my favorites section. 22 Q. Right. 23 A. If I recorded those.</p>	<p style="text-align: center;">Page 268</p> <p>1 A. Business. 2 Q. Steelcase is your main line. 3 A. Line. 4 Q. Do you have a franchise for Steelcase? 5 A. No, sir. They don't have franchises, just 6 to answer that. 7 Q. They don't have them. Okay. That was 8 almost a business question for which we 9 needed to call Henry, but -- 10 A. Those are the immediate ones that pop out in 11 my head. 12 Q. And those are because those -- you keep on 13 your favorites section sites that you go to 14 and visit on a regular basis. 15 A. That's correct. 16 Q. That are either business related or with the 17 weather -- 18 A. Right. 19 Q. -- or things that you have a direct interest 20 in; i.e., Hummers. 21 A. Correct. 22 Q. And those would be the only sites that you 23 would have under your favorites heading on</p>
<p style="text-align: center;">Page 267</p> <p>1 Q. Yes. 2 A. Yes, I would be able to recall that. 3 Q. Okay. And you have no recollection of ever 4 having done so. 5 A. No, sir. 6 Q. What sites are currently listed in your 7 favorites on your computer? 8 A. Fidelity, AmSouth, Colonial, Bloomberg, CNN, 9 eBay, BellSouth, Delta.com, Detroit Hummer, 10 Allan's Red Hummer Page, Colonial Web Biz, 11 Monster.com -- excuse me, Movingmonster. 12 That's to follow mortgage rates. 13 Theweatherchannel.com, Garrett Realty.com. 14 Q. Excuse me. Garrett Realty, those are the 15 people who handle the condominium rentals 16 for you at the beach? 17 A. Yes, sir. 18 That's the primary ones that come off 19 the top of my head. My finance ones are at 20 the top. 21 Q. Right. 22 A. Steelcase.com. 23 Q. That's your business?</p>	<p style="text-align: center;">Page 269</p> <p>1 the Internet? 2 A. Those are all that I recall right now. I 3 have some more, but I don't -- There are 4 some more Hummer sites. I think there's 5 Humvee.net. 6 Q. But all related to things that you have a 7 personal and daily interest in. 8 A. That's correct. 9 Q. And a very keen interest in, otherwise you 10 wouldn't save them, correct? 11 A. Some are keen, yes. 12 Q. Have you ever on occasion -- on any occasion 13 printed out pornographic material from the 14 Internet? 15 A. No, sir, not that I recall. I have a 16 printer. 17 Q. Now, the pornographic sites that you have 18 visited on the Internet, what type 19 pornography is found on those sites? 20 A. Adult, like Playboy-type stuff. 21 Q. Well, it is females primarily or is it male 22 and female or what type sites are these? 23 A. It's female.</p>

---

DEPOSITION OF MICHAEL G. HARBIN, JR.

VOLUME II

April 2, 2002

*Page 174 to Page 319*

---

CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

Haislip, Ragan, Green, Starkie & Watson, P.C.  
566 South Perry Street  
Post Office Box 62  
Montgomery, AL 36104  
Phone: (334) 263-4455

Deposition of Michael Harbin

I. II)

April 2, 2002

Page 174

1 IN THE CIRCUIT COURT  
2 FOR  
3 MONTGOMERY COUNTY, ALABAMA  
4 DOMESTIC RELATIONS DIVISION  
5  
6 IN RE: THE MARRIAGE OF  
7 HOPE DUNCAN HARBIN  
8 and CIVIL ACTION NO.  
9 DR-2001-1310  
10 MICHAEL G. HARBIN, JR.,  
11 Husband & Wife.  
12 \* \* \* \* \*  
13 VOLUME II  
14 \* \* \* \* \*  
15 DEPOSITION OF MICHAEL G. HARBIN, JR.,  
16 taken pursuant to stipulation and agreement before  
17 Gina L. Haislip, Registered Professional Reporter  
18 and Commissioner for the State of Alabama at Large,  
19 in the Law Offices Copeland, Franco, Screws & Gill,  
20 444 South Perry Street, Montgomery, Alabama, on  
21 Tuesday, April 2, 2002, commencing at approximately  
22 9:00 a.m.  
23 \* \* \* \* \*

Page 175

1 APPEARANCES  
2  
3  
4  
5 ON BEHALF OF THE WIFE:  
6 John A. Henig, Esq.  
7 COPELAND, FRANCO, SCREWS & GILL, P.A.  
8 Attorneys at Law  
9 444 South Perry Street  
10 Montgomery, Alabama  
11 D. Mitch Henry, Esq.  
12 WEBSTER, HENRY & LYONS  
13 Attorneys at Law  
14 Suite B  
15 418 Scott Street  
16 Montgomery, Alabama  
17  
18 ON BEHALF OF THE HUSBAND:  
19 J. Floyd Minor, Esq.  
20 MINOR & OLSZEWSKI, L.L.C.  
21 Attorneys at Law  
22 458 South Lawrence Street  
23 Montgomery, Alabama  
24  
25 ALSO PRESENT:  
26 Ms. Harbin  
27  
28 \* \* \* \* \*  
29  
30 INDEX  
31  
32 EXAMINATION PAGE  
33 By Mr. Henig ..... 178

Page 176

1 EXHIBITS  
2  
3  
4  
5 NUMBER DESCRIPTION PAGE  
6 EX 35 - 2000 M & M Properties tax return .. 179  
7 EX 36 - Warranty deed from Harbin's Inc.  
8 to M & M Properties, L.L.C. .... 180  
9  
10 EX 37 - 1997 Retail Enhancement Services  
11 tax return ..... 181  
12 EX 38 - 1998 Retail Enhancement Services  
13 tax return ..... 181  
14  
15 EX 39 - 2000 Retail Enhancement Services  
16 tax return ..... 181  
17 EX 40 - 1997 Harbin's, Inc. tax return .... 183  
18 EX 41 - 2000 Harbin's, Inc. tax return .... 183  
19 EX 42 - Documentation on deposits ..... 184  
20 EX 43 - 9/13/01 Customer Reprint of the  
21 Fidelity Investments statements .... 185  
22  
23 EX 44 - 2001 Fidelity Investments  
24 statement ..... 185  
25 (Originals of EX 37 - EX 41 returned to Mr. Minor.)  
26  
27 \* \* \* \* \*  
28  
29  
30  
31  
32  
33

Page 177

1 STIPULATION  
2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that  
4 Volume II of the deposition of  
5 MICHAEL G. HARBIN, JR.  
6 is taken pursuant to the Alabama Rules of Civil  
7 Procedure and that said deposition may be taken  
8 before Gina L. Haislip, Registered Professional  
9 Reporter, and Commissioner for the State of Alabama  
10 at Large, without the formality of a commission,  
11 that objections to questions other than objections  
12 as to the form of the question need not be made at  
13 this time but may be reserved for a ruling at such  
14 time as the said deposition may be offered in  
15 evidence or used for any other purpose by either  
16 party provided for by the Statute.  
17 It is further stipulated and agreed by and  
18 between counsel representing the parties in this  
19 case that the filing of said deposition is hereby  
20 waived and may be introduced at the trial of this  
21 case or used in any other manner by either party  
22 hereto provided for by the Statute regardless of  
23 the waiving of the filing of the same.

## Deposition of Michael Harbin, (Vol. II)

April 2, 2002

Page 178

1 It is further stipulated and agreed by and  
2 between the parties hereto and the witness that the  
3 signature of the witness to this deposition is  
4 hereby waived.

5 \* \* \* \* \*

6 MICHAEL G. HARBIN, JR.

7 The witness, having previously been  
8 duly sworn to speak the truth, the whole truth, and  
9 nothing but the truth testified further as follows:

10 EXAMINATION

11 BY MR. HENIG:

12 Q. Michael, you're still under oath, and we're  
13 continuing your deposition that was  
14 originally taken January 24th, 2002. Okay?

15 A. (Witness nodded in the affirmative).

16 Q. I didn't realize it had been that long.

17 Mr. Harbin, did you receive a copy of  
18 the Re-Notice for the taking of your  
19 deposition?

20 MR. HENIG: Come on in, Mitch.

21 (Brief recess.)

22 Q. (Mr. Henig continuing) Did you receive a  
23 copy of the Re-Notice of the taking of your

Page 179

1 deposition, Mr. Harbin?

2 A. I did.

3 Q. And in response, have you got some documents  
4 for me today?

5 A. I do.

6 Q. Good. May I have those.

7 A. Yes, sir.

8 MR. MINOR: Do you want to go by  
9 your letter?

10 MR. HENIG: Let's just see what  
11 we've got.

12 MR. MINOR: You had pared down  
13 your list in the letter, I  
14 think. M & M Properties,  
15 L.L.C. tax returns was the  
16 first one.

17 A. Here is the tax -- There's a tax return.  
18 (Exhibit Number 35 marked for  
19 identification.)

20 Q. Mr. Harbin, you've brought with you what  
21 I've marked as Exhibit Thirty-five, and  
22 that's the M & M Properties, L.L.C. tax  
23 return.

Page 180

1 A. Yes, sir.

2 Q. Okay. What else have you got?

3 A. I've got the warranty deed.

4 MR. MINOR: Just go down this list  
5 here.

6 THE WITNESS: Okay.

7 (Exhibit Number 36 marked for  
8 identification.)

9 Q. Thirty-six is a copy of the M & M  
10 Properties, L.L.C., warranty deed from  
11 Harbin's, Inc., to M & M Properties, L.L.C.,  
12 correct?

13 A. Correct.

14 Q. What else do you have there?

15 A. I've got -- On item two, I've got Retail's  
16 tax returns from 2000, '98, and '97.

17 Q. All right. Retail Enhancement Services,  
18 Inc.?

19 A. And those are my originals.

20 MR. HENIG: Gina is really good at  
21 taking care of them.

22 THE WITNESS: Okay.

23 MR. HENIG: I'm going to mark as

Page 181

1 Exhibit Thirty-seven the '97  
2 return. Exhibit Thirty-eight  
3 is the '98 return. Exhibit  
4 Thirty-nine I believe is going  
5 to be the 2000 return. Okay.  
6 (Exhibit Numbers 37, 38 & 39  
7 marked for identification.)

8 A. Tax returns for Harbin's, Inc., '97.

9 Q. Yeah. With the depreciation schedules.

10 Those are the main things we were looking  
11 for.

12 A. Yeah. And I called the accounting firm, and  
13 they were digging those up for me.

14 Q. You don't have the depreciation schedules  
15 today?

16 A. No, sir.

17 Q. Will you provide those to either Mr. Henry  
18 or Mr. Minor and they can provide them to  
19 me?

20 A. Yes, sir.

21 MR. MINOR: If they locate them.

22 THE WITNESS: Yeah.

23 A. I've got '97 Harbin's tax return and 2000.



## Deposition of Michael Harbin

I. II)

April 2, 2002

Page 182

- 1 Q. Let me ask you something --
- 2 A. Okay.
- 3 Q. -- real quick before I mark those,
- 4 Mr. Harbin. You were the principal
- 5 stockholder in Retail Enhancement Services,
- 6 Inc., were you not?
- 7 A. Uh-huh (positive response).
- 8 Q. And you owned what percent of the stock?
- 9 Help refresh my recollection.
- 10 A. I believe it was 54%. I'd have to flip
- 11 through there to be totally accurate with
- 12 that.
- 13 Q. This was a Subchapter S Corporation so that
- 14 these flowed through --
- 15 A. To the shareholders.
- 16 Q. -- to you personally.
- 17 A. Yes, sir.
- 18 Q. Were you personally guaranteed on the
- 19 obligations of the corporation?
- 20 A. I was.
- 21 Q. Were the other shareholders?
- 22 A. No.
- 23 Q. You were the only one who anybody

Page 183

- 1 required --
- 2 A. Correct.
- 3 Q. -- a personal guarantee?
- 4 All right. What else?
- 5 A. That's Harbin's '97, '98, -- '97 and 2000
- 6 return.
- 7 MR. HENIG: '97, then, we'll mark
- 8 as Exhibit Forty and the 2000
- 9 return we'll mark as Exhibit
- 10 Forty-one. Okay.
- 11 (Exhibit Numbers 40 & 41 marked
- 12 for identification.)
- 13 Q. And you did not bring with you the
- 14 depreciation schedules.
- 15 A. No. No, sir.
- 16 Q. You don't have those in your possession.
- 17 A. I don't. I asked -- No, I do not.
- 18 Q. And you've asked your accountants --
- 19 A. To furnish those.
- 20 Q. -- to furnish those.
- 21 A. Yes, sir.
- 22 Q. Did your accountants indicate that they had
- 23 those schedules?

Page 184

- 1 A. Last night when I was talking to them, they
- 2 were trying to locate them.
- 3 Q. Okay. They didn't tell you of any reason
- 4 they would have destroyed those depreciation
- 5 schedules, did they?
- 6 A. Oh, no, sir.
- 7 Q. Anything else that you brought with you?
- 8 A. Deposits.
- 9 MR. HENIG: I'll mark that as
- 10 Exhibit Forty-two.
- 11 (Exhibit Number 42 marked for
- 12 identification.)
- 13 MR. MINOR: Now, attached to the
- 14 back of that is the Fidelity
- 15 statement. That's in addition
- 16 to the deposits.
- 17 MR. HENIG: I'll take that out.
- 18 MR. MINOR: So pull that. We need
- 19 to make that a separate
- 20 exhibit. You're marking as
- 21 Forty-two a composite exhibit?
- 22 MR. HENIG: Right, that Mr. Harbin
- 23 has furnished indicating the

Page 185

- 1 deposits that we had inquired
- 2 about.
- 3 Q. I'll ask you some questions about that, but
- 4 let me finish marking these.
- 5 Mr. Harbin, your attorney furnished to
- 6 me a customer reprint of the Fidelity
- 7 Investments accounts, and I'm going to mark
- 8 that as Exhibit Forty-three.
- 9 (Exhibit Number 43 marked for
- 10 identification.)
- 11 Q. And that is -- that is a reprint that is
- 12 dated 9/13 of '01. So sometime in the fall
- 13 it was ordered. And it's for the years, I
- 14 believe, '98, '99, and 2000. I'll ask you
- 15 if you recognize what I've marked as Exhibit
- 16 Forty-three.
- 17 A. I do.
- 18 (Exhibit Number 44 marked for
- 19 identification.)
- 20 Q. And I had requested the 2001 information for
- 21 the same Fidelity account, and I'll ask you
- 22 if what I have marked as Exhibit Forty-four
- 23 is what you've furnished in response to that

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 186

- 1 request.
- 2 A. 2001 tax reporting statement, yes.
- 3 Q. Do you, however, have the 2001 report that
- 4 is identical to those reports in Exhibit
- 5 Forty-three? What you furnished in
- 6 Forty-four is not the same as in
- 7 Forty-three. It's not the same information.
- 8 A. This is for '99?
- 9 Q. Yeah.
- 10 MR. MINOR: Go on through. It's
- 11 for more than that.
- 12 Q. It's '98, '99, and 2000. And I think it has
- 13 all of your deposits, withdrawals. It's
- 14 more of a daily or monthly activity report,
- 15 and this is a cumulative report.
- 16 A. Okay.
- 17 Q. And I'm asking you do you have somewhere
- 18 your 2001 Fidelity report that is identical
- 19 to those reports in Exhibit Forty-three?
- 20 A. Yes, sir, I do somewhere.
- 21 Q. Okay. And if you would, please furnish that
- 22 to Mr. Minor so that he can furnish it to
- 23 me.

Page 187

- 1 A. I will.
- 2 Q. Mr. Harbin, I'm going to go through some of
- 3 these deposits. These are deposits that
- 4 were made into your personal checking
- 5 account; is that correct?
- 6 A. Yes, sir.
- 7 Q. And that is an account that was in your name
- 8 only.
- 9 A. Correct.
- 10 Q. And if I recall, isn't that an account that
- 11 you had when you started working at AmSouth
- 12 Bank?
- 13 A. Yes, sir.
- 14 Q. Okay. The first deposit slip here is a
- 15 State of Alabama Department of Revenue check
- 16 that's issued in October of 2000 in the
- 17 amount of \$1,933. Is that a tax return -- a
- 18 tax refund check?
- 19 A. I believe, yes, sir.
- 20 Q. Do you have a copy of this where you can
- 21 look on with me?
- 22 A. I do not. I would say that's an income tax
- 23 refund, income tax refund, yes, sir.

Page 188

- 1 Q. And that is a refund check that's made
- 2 payable to both you and your wife, Hope
- 3 Harbin; is that correct?
- 4 A. Yes, sir.
- 5 Q. From the joint tax return.
- 6 A. Yes, sir.
- 7 Q. The second check on the very first page,
- 8 tell us what that is.
- 9 A. It's an income tax refund, \$265.
- 10 Q. Why were there two checks issued for the tax
- 11 refund? Are there two different tax
- 12 returns? They're issued on the same date,
- 13 State of Alabama, one in the amount of \$265
- 14 and one in the amount of \$1,933.
- 15 A. No, sir. There was one tax return.
- 16 Q. And yet you would agree with me there are
- 17 two separate checks?
- 18 A. Two separate checks, both the same --
- 19 Q. And issued in sequence?
- 20 A. Yes, sir.
- 21 Q. Who is Mark Phillips?
- 22 A. He was a renter in my father's house.
- 23 Q. That's the house that you testified your

Page 189

- 1 sister owned, you handled the rental
- 2 arrangements, and you would split the rent
- 3 50-50; is that correct?
- 4 A. Yes, sir.
- 5 Q. The next one that I wanted to ask you about
- 6 is an AmSouth -- a check written to AmSouth
- 7 on an account at SouthTrust Bank that's
- 8 listed in your name only; is that correct?
- 9 A. Yes, sir.
- 10 Q. Is that account at SouthTrust still in
- 11 existence?
- 12 A. Yes, sir.
- 13 Q. Have you furnished us the bank statements on
- 14 it?
- 15 A. It's the equity line.
- 16 Q. The equity line?
- 17 A. Yes, sir.
- 18 Q. And this is an equity line on the Augusta
- 19 Avenue home?
- 20 A. Yes, sir.
- 21 Q. You haven't furnished us the canceled checks
- 22 on that equity line.
- 23 A. I gave you the reprint of --

Deposition of Michael Harbin J. II)

April 2, 2002

Page 190

1 Q. You gave us a reprint of the withdrawals  
2 that had been made on the --  
3 A. And the payments.  
4 Q. -- on the equity line. And the payments  
5 that you had been made on it?  
6 A. Yes, sir.  
7 MR. MINOR: Uh-huh (positive  
8 response).  
9 Q. Do you have a checking account that goes  
10 with the equity line?  
11 A. Yes, sir, but they don't --  
12 Q. This check that we're looking at to AmSouth  
13 Bank in the amount of \$12,581.62 is check  
14 number 144, which would indicate there had  
15 been at least 143 checks before it.  
16 A. I don't know what the starting number was.  
17 MR. MINOR: I object. I don't  
18 know what sequential number  
19 they start with.  
20 Q. You certainly don't recall that SouthTrust  
21 gave you a checking account that started  
22 with number 143, do you, or 144?  
23 MR. MINOR: They could have

Page 191

1 started with 100.  
2 Q. Could have, clearly.  
3 A. They could have.  
4 Q. But that would clearly indicate to you that  
5 other checks have been written on there.  
6 A. Oh, sure, yes. Some other checks have been  
7 written on there.  
8 Q. And do you have those monthly statements?  
9 A. No, sir, I do not.  
10 Q. Do you have them anywhere in your  
11 possession?  
12 A. I don't.  
13 Q. So either one of two things. You would have  
14 to get them from SouthTrust or we would have  
15 to subpoena them.  
16 A. I asked SouthTrust to give me the reprint of  
17 the activity, which y'all requested, and  
18 that's what I got.  
19 MR. MINOR: We've given you that.  
20 MR. HENIG: I know the reprint,  
21 but it doesn't tell me to whom  
22 the checks were written or  
23 anything else.

Page 192

1 THE WITNESS: Well, I could ask  
2 them to get that up.  
3 Q. Do you remember the nature of this  
4 withdrawal or the purpose of the withdrawal?  
5 A. I believe it was a note that I paid to  
6 Sterling Bank. I had an unsecured note over  
7 there.  
8 Q. Was that a joint note or an individual note?  
9 A. I believe it was an individual.  
10 Q. In your name only?  
11 A. Yes, sir.  
12 Q. Next deposit is a deposit from Retail  
13 Enhancement Services. That's the  
14 corporation --  
15 A. Uh-huh (positive response).  
16 Q. -- that you just testified about, the  
17 Subchapter S that you were a majority owner.  
18 A. Uh-huh (positive response).  
19 Q. Fidelity Investments.  
20 A. Yes, sir.  
21 Q. This is a check for 7,600?  
22 A. Yes, sir.  
23 Q. And it's stubbed at the bottom --

Page 193

1 A. Inventory --  
2 Q. -- inventory reimbursements?  
3 A. -- reimbursements, yes, sir.  
4 Q. It's drawn on AmSouth, but the account  
5 holder's name is unclear. Who was the  
6 account holder?  
7 A. This was Eclectic Imports, the furniture  
8 company that Hope, myself, Jackie Parks, and  
9 Lee Parks had together.  
10 Q. And you were writing a check from Michael  
11 Harbin to Michael Harbin.  
12 A. Correct.  
13 Q. Next check that's deposited is a United  
14 States income tax refund -- refund check  
15 issued in both your name and Hope's name?  
16 A. That's correct.  
17 Q. Did Hope endorse these checks?  
18 A. I'm sure she did.  
19 Q. Again from a joint tax return?  
20 A. Yes, sir. I believe -- Well, what's the  
21 date on that one? '99? '99?  
22 Q. It's the December of '99 tax return. I  
23 don't know the date.



## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 194

- 1 A. Okay. I don't know.  
 2 Q. It had to be sometime around May of 2000  
 3 because the other check is issued at the  
 4 same time.  
 5 A. Uh-huh (positive response).  
 6 Q. And that is a check -- And the other check  
 7 is check number 1481 from Harbin-Stern  
 8 Brothers, L.L.C. --  
 9 A. Uh-huh (positive response).  
 10 Q. -- to AmSouth Bank. And it's for what?  
 11 A. American Express refund.  
 12 Q. Tell me the nature of that.  
 13 A. Evidently I charged something on my personal  
 14 card for the company.  
 15 Q. Harbin-Stern Brothers is writing Michael  
 16 Harbin a check for \$3,323 and some-odd  
 17 cents.  
 18 A. Uh-huh (positive response).  
 19 Q. And it's for reimbursement of what?  
 20 A. A security system that I purchased for the  
 21 company.  
 22 Q. Harbin-Stern Brothers, April 3rd of '01, is  
 23 reimbursing you on a loan repayment --

Page 195

- 1 A. Yes, sir.  
 2 Q. -- for \$3,500?  
 3 A. Yes, sir.  
 4 Q. Harbin-Stern Brothers is paying the AmSouth  
 5 payment again. It says loan repayment in  
 6 the amount of 6,000?  
 7 A. Yes, sir.  
 8 Q. Is this a personal loan that you made to  
 9 Harbin-Stern Brothers?  
 10 A. Yes, sir.  
 11 Q. Do you have a note to evidence that?  
 12 A. (Witness nodded in the negative). No, I  
 13 don't.  
 14 Q. No note?  
 15 Tell me what evidence there is that  
 16 Harbin-Stern Brothers owed you that money.  
 17 A. Let's see. There was a check in here, the  
 18 Principal Financial Group, for \$48,000, and  
 19 I deposited 43,000 into Harbin-Stern  
 20 Brothers.  
 21 Q. How much does Harbin-Stern Brothers owe you  
 22 today?  
 23 A. That's a good question.

Page 196

- 1 Q. What do you contend that they owe you?  
 2 A. On the balance sheet it shows I have a  
 3 credit due to me of 14,000, but there's a  
 4 receivable that's been put in place showing  
 5 where Harbin-Stern Brothers paid the cable  
 6 TV, my gas, long distance -- telephone  
 7 charges that are billed back to me, so  
 8 that's a good question. I don't know if I'm  
 9 responsible for the TV that people watch  
 10 throughout the facility and as a business  
 11 person am I responsible --  
 12 Q. What do you contend that Harbin-Stern  
 13 Brothers owes you personally?  
 14 A. I don't know.  
 15 Q. The 14,000?  
 16 A. 14,000 right now is on the books.  
 17 Q. Okay. So there's an asset there of a note  
 18 payable to you or a debt payable to you of  
 19 \$14,000, correct?  
 20 A. Yes, sir.  
 21 Q. Who is Crystal Hill?  
 22 A. She's a former employee.  
 23 Q. Are these payments that I will see from

Page 197

- 1 Harbin-Stern Brothers to AmSouth Bank that  
 2 are deposited into your account repayment of  
 3 that 40-something thousand dollars that you  
 4 advanced Harbin-Stern Brothers?  
 5 A. Yes, sir.  
 6 Q. The check from USAA Insurance in the amount  
 7 of \$4,703, what type claim was that?  
 8 A. That was when Windstorm was it Barry that  
 9 came through, that came through last summer.  
 10 Q. Where were the damages?  
 11 A. At the beach home in Seagrove, Florida.  
 12 Q. Is the beach house account also with  
 13 AmSouth?  
 14 A. Yes, sir.  
 15 Q. Do you know what the current balance in it  
 16 is?  
 17 A. \$72, I believe.  
 18 Q. There's a check here, check number 150.  
 19 Earlier we were on check number 144, I  
 20 believe --  
 21 A. Uh-huh (positive response).  
 22 Q. -- out of the home equity. This is a  
 23 SouthTrust Bank check written to Michael

Deposition of Michael Harbin

I. II)

April 2, 2002

Page 198

- 1 Harbin in the amount of \$10,000.  
 2 A. Yes, sir.  
 3 Q. And what was that for, please?  
 4 A. I needed money to pay the bills around the  
 5 house.  
 6 Q. That's your testimony as to the reason for  
 7 drawing it August the 28th of '01.  
 8 A. I'm reasonably sure. You have my bank  
 9 statements, so without being able to  
 10 compare, I can't give you a definitive  
 11 answer.  
 12 Q. Mr. Harbin, explain the deposit on September  
 13 the 5th of '01 to me, please.  
 14 A. \$5,000, payment on 401(k) note, cash in of  
 15 2,400, total of 7,400.  
 16 Q. What is the payment on the 401(k) note?  
 17 A. That's the 401(k) money that I borrowed to  
 18 put into the company.  
 19 Q. From whom did you borrow it?  
 20 A. My 401(k), my retirement money.  
 21 Q. So Harbin's, Inc., which in September of '01  
 22 was a dormant corporation, correct --  
 23 A. Explain dormant.

Page 199

- 1 Q. I mean, it had no activity, no business  
 2 activity whatsoever, Harbin's, Inc.  
 3 A. That's correct.  
 4 Q. -- had a bank account that had at least  
 5 \$5,000 in it.  
 6 A. That's correct.  
 7 Q. Do you know what the bank balance is in  
 8 Harbin's, Inc., today?  
 9 A. I do not. This account has been -- This  
 10 account has been renamed Harbin-Stern  
 11 Brothers. I think we're just still using  
 12 the same checks.  
 13 Q. With Sterling Bank?  
 14 A. That's correct.  
 15 The -- Our credit card charges from  
 16 American Express for the company goes into  
 17 Sterling Bank.  
 18 Q. All right. But why is Harbin's, Inc.,  
 19 writing Michael Harbin a check for \$5,000?  
 20 A. Like I said, Harbin's, Inc. -- this account  
 21 has been renamed Harbin-Stern Brothers, and  
 22 we're still using the old checks without  
 23 buying new ones.

Page 200

- 1 Q. Even if it was Harbin-Stern Brothers, why  
 2 would they be repaying you?  
 3 A. For the money that I put into the company.  
 4 Q. Again, this is part of the repayment of the  
 5 43,000?  
 6 A. Yes, sir. Payment on 401(k) note.  
 7 Q. Okay. And the cash, \$2,400 cash.  
 8 A. That was a refund of a -- of a -- for lack  
 9 of a better word, of a pyramid scheme that  
 10 was brought up from Mobile to Montgomery.  
 11 And I had given 2,400 or \$2,500 to an  
 12 individual, and subsequently the thing went  
 13 bust, but we were able to refund all our  
 14 money.  
 15 Q. Is that Jackie Parks' stepfather or the guy  
 16 who's married to Jackie Parks' mother?  
 17 A. Huh?  
 18 Q. Is he involved in this?  
 19 A. No. Winton Blount got me involved in this.  
 20 Q. Winton Blount.  
 21 Did Winton Blount hand you \$2,400 in  
 22 cash?  
 23 A. No.

Page 201

- 1 Q. Who handed you \$2,400 in cash?  
 2 A. It came out of Texas. The name of the  
 3 organization was Life Without Debt, and it  
 4 was headquartered in Texas. And the money  
 5 came to me from Life Without Debt in Texas  
 6 in cash.  
 7 Q. Twenty-four \$100 bills?  
 8 A. Exactly, taped and wrapped.  
 9 Q. Through the U.S. Mail?  
 10 A. Through the U.S. Express Mail.  
 11 Q. Okay. The next check is a deposit. The  
 12 check is from Alfa Financial Corporation, a  
 13 check in the amount of 147,000 some-odd  
 14 dollars that's deposited into your personal  
 15 bank account.  
 16 A. Uh-huh (positive response).  
 17 Q. The check is made to Harbin's. Is that a  
 18 check that is in payment of a debt from Alfa  
 19 to Harbin's-Stern Brothers?  
 20 A. Yes, sir.  
 21 Q. And it's deposited into your personal  
 22 account?  
 23 A. That's correct.

*Did you record  
as income?*

## Deposition of Michael Harbin, (Vol. II)

April 2, 2002

Page 202

- 1 Q. And for what purpose was that?
- 2 A. This money was to be earmarked for a
- 3 \$300,000 project that we had, and we stuck
- 4 it in a separate account, my account, so
- 5 that we wouldn't have the money in our
- 6 operating account so that we would spend it.
- 7 It had to be -- We segregated it.
- 8 Q. "We" deposited it into your account. Who is
- 9 the we that deposited it into your account?
- 10 A. Well, me. I did.
- 11 Q. Okay. So we is you.
- 12 A. We, me.
- 13 Q. Did you discuss depositing it into this
- 14 personal account with anybody at
- 15 Harbin's-Stern Brothers?
- 16 A. Yes.
- 17 Q. With whom?
- 18 A. Mike Behrman.
- 19 Q. And he approved that.
- 20 A. Sure.
- 21 Q. And your AmSouth account is an account that
- 22 earns interest, does it not?
- 23 A. Yes, sir.

Page 203

- 1 Q. When you wrote the check back out, did you
- 2 repay Harbin-Stern Brothers the interest
- 3 that was earned on the money while it was in
- 4 your account?
- 5 A. No, I did not calculate that.
- 6 Q. That was a deposit at a posting date of June
- 7 the 8th. Again on July the 20th, the next
- 8 month, there appears to be another deposit
- 9 of 147,700 and some-odd dollars again drawn
- 10 on an Alfa check to Harbin's; is that
- 11 correct?
- 12 A. Yes, sir.
- 13 Q. And is that a --
- 14 A. Yes, sir.
- 15 Q. -- the same explanation as before?
- 16 A. Yes, sir.
- 17 Q. And is that a check that you discussed with
- 18 Michael Behrman before depositing it into
- 19 your personal account?
- 20 A. Yes, sir.
- 21 Q. And had his approval and understanding.
- 22 A. Correct.
- 23 Q. And did you again just pay back to

Page 204

- 1 Harbin-Stern Brothers the exact amount and
- 2 not calculate the interest that was earned
- 3 on it?
- 4 A. That's correct.
- 5 Q. What is this cash in that occurred with the
- 6 same deposit?
- 7 A. I don't think that's mine because up here
- 8 you can see there's no cash in.
- 9 Q. Right.
- 10 A. That's somebody else's.
- 11 Q. Okay. That's not part of your account.
- 12 A. No, sir.
- 13 Q. Again, Harbin-Stern Brothers in December of
- 14 '01 is writing you a check in the amount of
- 15 4,452, and I assume -- and this time it's
- 16 some-odd cents. Is this again repayment of
- 17 the monies you advanced Harbin-Stern
- 18 Brothers?
- 19 A. No, sir, that's a gross payroll check.
- 20 Q. Okay. This is a check from a Fred Winham or
- 21 Winharm, d/b/a Florida Antique Mall.
- 22 A. Yes, sir.
- 23 Q. What is he purchasing from you?

Page 205

- 1 A. He purchased a player piano.
- 2 Q. Was this part of the antiques that was in
- 3 the separate business or was this --
- 4 A. No, sir. That was a player piano that I
- 5 acquired ten, twelve years ago, and I sold
- 6 it on eBay.
- 7 Q. Tell me of this check from Richard and
- 8 Margaret Brown.
- 9 A. That was for furniture from that Eclectic
- 10 Imports.
- 11 Q. And the next check is from John Goodwyn
- 12 Gallion to Hope Harbin.
- 13 A. Yes, sir.
- 14 Q. And it's deposited into your personal
- 15 account?
- 16 A. Yes, sir.
- 17 Q. Did Hope endorse that check?
- 18 A. She would have had to. I'm --
- 19 Q. Next is a check from Principal Life
- 20 Insurance Company to you on September 1 of
- 21 2000 in the amount of \$45,000. Tell me of
- 22 that check.
- 23 A. That's my 401(k) money.

Deposition of Michael Harbin J. II)

April 2, 2002

Page 206

- 1 Q. That's the money you pulled out of your  
2 401(k) plan and put in the company, and they  
3 were repaying you.  
4 A. Yes, sir.  
5 Q. April 17th, 2000, there's a check from  
6 Retail Enhancement Services, Inc., in the  
7 amount of \$22,309.20, and it says a 1999 tax  
8 distribution?  
9 A. Yes, sir.  
10 Q. What is that? Is that a tax refund or --  
11 A. That's to cover the income tax due on the  
12 profit.  
13 Q. So '99 was a profitable year for Retail  
14 Enhancement?  
15 A. Yes, sir.  
16 Q. There's a SouthTrust Bank check dated  
17 February the 8th of 2000 in the amount of  
18 \$8,000. Are those loan proceeds?  
19 A. I don't recall.  
20 Q. Is there any other reason that SouthTrust  
21 Bank would have been writing a check to the  
22 order of Michael G. Harbin, Jr., \$8,000?  
23 A. Does that say name of remitter? I can't

Page 207

- 1 read it.  
2 Q. I think it might, but I can't read it  
3 either. That's why I asked you what it  
4 could be.  
5 A. I don't recall. I had a -- I don't recall.  
6 Q. There's a check here from Matt Rainer. Is  
7 that a rental check?  
8 A. Yes, sir.  
9 Q. Who is Revest?  
10 A. They're a company in Atlanta.  
11 Q. What do they do?  
12 A. They buy and sell Steelcase furniture.  
13 Q. Why would their check made payable to  
14 Harbin's, Inc., be deposited into your  
15 account, your personal account?  
16 A. I believe that was a refund for work that we  
17 did with them in '99.  
18 Q. Which Harbin's, Inc., did.  
19 A. Yes, sir.  
20 Q. And it was income that Harbin's, Inc., had  
21 earned in '99.  
22 A. Correct. Well, I guess you could classify  
23 it as income.

Page 208

- 1 Q. Again, then, why would it be deposited into  
2 your personal account and not into the  
3 corporate account?  
4 A. Because Harbin's, Inc., was pretty much  
5 dormant in '99 -- after '99.  
6 Q. But still had some payments that it  
7 received.  
8 A. Correct.  
9 Q. And you used those as your own because you  
10 were -- you and your sister were the sole  
11 stockholders of Harbin's, Inc.  
12 A. Correct.  
13 Q. And so when a check came, rather than  
14 deposit it into a dormant checking account,  
15 you just put it in your own account.  
16 A. It would appear so.  
17 Q. Do you know how it was treated for income  
18 tax purposes?  
19 A. I don't.  
20 Q. Do you know whether or not it's reflected on  
21 your personal income tax return?  
22 A. I don't.  
23 Q. Do you have any recollection of having

Page 209

- 1 reflected it on your personal return?  
2 A. I don't.  
3 Q. That's all part of a transaction dated March  
4 9th of 2000, correct?  
5 A. Yes, sir.  
6 Q. On February the 17th of 2000, Retail  
7 Enhancement Services, Inc., is writing you a  
8 check for \$10,000.  
9 A. Yes, sir.  
10 Q. And what was that for?  
11 A. I believe that was just an advance.  
12 Q. Do you recall ever repaying it?  
13 A. I don't.  
14 Q. Did you ever treat that as income?  
15 A. I don't recall.  
16 Q. You don't recall whether or not you treated  
17 it as income or whether or not you did not  
18 treat it as income? Which is it?  
19 A. I didn't handle the payroll processing of  
20 our company, so -- and without my tax  
21 returns in front of me, I wouldn't --  
22 Q. Well, let me ask you this, Mr. Harbin.  
23 A. All right.



## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 210

- 1 Q. Did Retail Enhancement Services, Inc., pay  
2 you a salary?  
3 A. No, sir.  
4 Q. Then it wouldn't matter who handled the  
5 payroll. That wouldn't be payroll, would  
6 it?  
7 A. Well, if it was an advance.  
8 Q. An advance on what? If you're not paid a  
9 salary and it's a Subchapter S Corporation  
10 where everything flows through to you, is  
11 there any reason other than part of the  
12 profits being paid to you that Retail  
13 Enhancement Services, Inc., would be writing  
14 you a check?  
15 A. Consulting fee?  
16 Q. Did you charge a consulting fee to Retail  
17 Enhancement Services at any time?  
18 A. Not on an official paper or anything, no,  
19 sir.  
20 Q. Okay. Well, you asked that as though it  
21 were a question, not a statement. When you  
22 said consulting fee, it was more of an  
23 inquiry. You weren't testifying that you

Page 211

- 1 received a consulting fee, were you?  
2 A. No.  
3 Q. Check number 142 on Michael G. Harbin,  
4 SouthTrust Bank, is a payment to you of  
5 \$10,000. I think earlier we looked at check  
6 number 144, didn't we?  
7 A. Yes, sir.  
8 Q. Is this the same bank account?  
9 A. I believe so.  
10 Q. And is this a withdrawal on your --  
11 A. Equity line.  
12 Q. -- equity line?  
13 A. Yes, sir.  
14 Q. Which is a second mortgage, as I recall your  
15 testimony earlier, on a home that is owned  
16 by your wife only.  
17 A. It's deeded in her name; that's correct.  
18 Q. Okay. Titled in her name only.  
19 A. Yes, sir.  
20 Q. Do you know what you did with this \$10,000?  
21 A. I would have to go back to my bank  
22 statements. That's my AmSouth checking  
23 number.

Page 212

- 1 Q. Right. March the 15th, check number 137 on  
2 the same equity line account, \$3,000  
3 deposited into your personal account. Do  
4 you know what happened there?  
5 A. No, sir.  
6 Q. Interestingly enough, there was a \$3,000  
7 check written but only \$2,500 that was  
8 actually deposited. Do you remember what  
9 you did with the \$500 cash?  
10 A. I don't recall.  
11 Q. March 8th of 2000, again on the same -- this  
12 is check number 136. You deposited  
13 \$10,000 -- You wrote a check for \$10,000 to  
14 your -- to AmSouth, but then the total  
15 deposit amount was only \$3,700, and you had  
16 a cash-out ticket. What did you do with the  
17 \$7,000 in cash?  
18 A. I didn't have \$7,000 in cash.  
19 Q. Well, now, you follow it with me, and you  
20 tell me if I've said anything wrong. Matt  
21 Rainer wrote you a rent check for \$600.  
22 A. Uh-huh (positive response).  
23 Q. There was a \$10,000 check that you wrote on

Page 213

- 1 your equity line.  
2 A. Uh-huh (positive response).  
3 Q. Check number 136. And then there's a  
4 cash-out ticket that's not clear. But it  
5 shows the amount of the deposit on March the  
6 9th as being \$3,737.53 --  
7 A. Yes, sir.  
8 Q. -- which is some \$7,000 less than those two  
9 checks.  
10 Did you pay to Winton Blount cash for  
11 your investment in --  
12 A. I did.  
13 Q. How much cash did you actually pay?  
14 A. 2,500.  
15 Q. Would that have been -- Would March 9th of  
16 2000 have been about the time that you paid  
17 that \$2,500 cash?  
18 A. I -- I don't know.  
19 Q. Well, let me ask you this. Would drawing  
20 out some 68, 6900, \$7,000 in cash be an  
21 unusual event --  
22 A. Yes, sir.  
23 Q. -- for Michael Harbin to --

Deposition of Michael Harbin

.. II)

April 2, 2002

Page 214

1 A. Yes, sir.  
 2 MR. MINOR: Object to the form.  
 3 There's been no testimony he  
 4 drew that amount of money out.  
 5 MR. HENIG: Well, we're looking at  
 6 the deposit slips, and we're  
 7 looking at the checks that made  
 8 up the deposit. And there was  
 9 a cash out --  
 10 MR. MINOR: He would have probably  
 11 deposited it and paid on  
 12 something else the rest of it.  
 13 There's been no -- He hasn't  
 14 testified he took 7 grand cash  
 15 out.  
 16 Q. Can you explain, other than the taking of  
 17 \$7,000 cash or approximately that amount,  
 18 why there would not have been a \$10,600  
 19 deposit made on March the 9th?  
 20 A. This cash out does not reflect I took cash  
 21 out, so I can't -- I don't know.  
 22 Q. It doesn't reflect the amount. It does  
 23 reflect that cash was taken out. That's the

Page 215

1 reason for a cash-out ticket, isn't it?  
 2 A. Does it reflect it came out of my deposit?  
 3 Q. You tell me. I'm looking at the documents  
 4 you've provided.  
 5 A. I see a 600 and a 10,000, and I see a  
 6 partially blanked out cash out.  
 7 Q. And do you see at the very top of the page  
 8 an amount that was deposited into the  
 9 account?  
 10 A. That's correct.  
 11 Q. And what amount is shown as being deposited  
 12 into that account on March the 9th?  
 13 A. 3,737.53.  
 14 Q. Okay. How much is the total of the two  
 15 checks that are reflected here?  
 16 A. 10,600.  
 17 Q. So you would agree with me there is some  
 18 difference there in what's shown as  
 19 deposited and what the two checks that are  
 20 shown that are made up as part of that  
 21 deposit.  
 22 A. Yes, sir. It's a discrepancy in this paper.  
 23 Q. Would you ask the bank to furnish you with a

Page 216

1 clearer copy of the deposit that is made on  
 2 March the 9th of 2000 --  
 3 A. Yes, sir.  
 4 Q. -- so that we can go ahead and get that  
 5 clear?  
 6 A. Yes, sir.  
 7 Q. Do you need anything else from it?  
 8 A. I need this --  
 9 Q. The account number. Serial number is blank.  
 10 Date, case, date and time was March 27th of  
 11 '01 at 7:41.  
 12 A. Let me just write that down.  
 13 Q. Sure. Write down anything you want to so we  
 14 can get it squared away.  
 15 A. That's fine.  
 16 Q. And obviously -- They were able --  
 17 Interestingly enough, they were able to  
 18 xerox the entire page, but when it came to  
 19 this cash memo, something had covered up  
 20 that and it didn't xerox, so I'm sure  
 21 they'll give you a clean page there.  
 22 A. Yes, sir.  
 23 Q. And it also appears that these checks --

Page 217

1 Let's see. On the next page there's another  
 2 check from Mark Phillips for 615 and a  
 3 cash-out ticket of 100, but it doesn't show  
 4 what check made up the \$1,933. Do you know  
 5 what check that was?  
 6 A. No, sir.  
 7 Q. Do you see what I'm talking about?  
 8 A. Yes, sir. And this may not be in order. If  
 9 we keep going, we may find it.  
 10 Q. Those are just rent checks and then a  
 11 Harbin-Stern Brothers check to you.  
 12 A. It's for Christmas social function.  
 13 Q. A \$2,000 check from Fidelity Investments,  
 14 but there appears to be two other checks,  
 15 one for 1,050 and one for 1,074 that make up  
 16 this deposit.  
 17 A. There are.  
 18 Q. Here's the 1,074 and the 1,050. One is  
 19 AmSouth, travel expenses, paid to you by  
 20 Jackie Parks?  
 21 A. That's correct.  
 22 Q. On what account?  
 23 A. This is the Eclectic Imports account.

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 218

- 1 Q. And she was also making a payment to you of  
2 1,074. Do you know what that was for? It  
3 says reimbursement.  
4 A. Inventory reimbursement.  
5 Q. S.P. Richards & Company wrote Harbin's a  
6 check for \$18,204 payable on March the 15th  
7 of 2000 that was deposited into your  
8 personal account.  
9 A. Yes, sir.  
10 Q. Again, was that a debt owed to Harbin's,  
11 Inc.?  
12 A. A debt?  
13 Q. Yeah. I mean, did S.P. Richards & Company  
14 owe Harbin's, Inc., \$18,204?  
15 A. This was a refund, so to speak, for the  
16 work, the cumulative total of the sales that  
17 Harbin's, Inc., did in '99. It was like a  
18 rebate.  
19 Q. Okay. But it's a rebate that Harbin's, Inc.  
20 earned.  
21 A. Correct.  
22 Q. And S.P. Richards is a supplier of Harbin's,  
23 Inc.

Page 219

- 1 A. Yes, sir.  
2 Q. And then at the end of the year, they  
3 calculate how much business you've done with  
4 them and they make a refund to you.  
5 A. Yes, sir.  
6 Q. Okay. And Harbin's, Inc., was a  
7 corporation, correct?  
8 A. Yes, sir.  
9 Q. And you did not deposit this rebate of March  
10 15th, 2000 into Harbin's, Inc.  
11 A. No. That's correct.  
12 Q. You deposited it into your own personal  
13 account.  
14 A. Yes, sir.  
15 Q. Did you declare it as income in 2000?  
16 A. I asked my accountants yesterday to look  
17 into that.  
18 Q. What other inquiries did you ask your  
19 accountants to make as to whether or not you  
20 declared something as income that appears in  
21 these deposit slips?  
22 A. That was it other than the rent checks.  
23 Q. Let me ask you this so that we can be clear

Page 220

- 1 on this. This S.P. Richards Company --  
2 A. Yes, sir.  
3 Q. -- are they rebating to you for the  
4 materials that Harbin's purchased from them  
5 in 1999?  
6 A. Yes, sir.  
7 Q. All right. So this is a year-end rebate,  
8 correct?  
9 A. Yes, sir.  
10 Q. Harbin's, Inc., had no business activity in  
11 1999.  
12 A. Yes, we did.  
13 Q. What did Harbin's, Inc., have in 1999? Not  
14 Harbin-Stern Brothers but Harbin's, Inc.  
15 A. Over \$3,000,000 plus in revenue.  
16 Q. In 1999?  
17 A. Yes, sir.  
18 Q. Okay. When were the two companies merged?  
19 I'm sorry.  
20 A. October of '99.  
21 Q. October of '99.  
22 For accounting purposes, when would  
23 Harbin's, Inc., book a rebate on its books

Page 221

- 1 and records?  
2 A. That's something I'd have to ask my people  
3 that book them.  
4 Q. Were you on a cash basis where you would  
5 book them upon receipt?  
6 A. Is there another basis?  
7 Q. Accrual.  
8 A. Accrual?  
9 Q. Yeah.  
10 A. I'm --  
11 Q. Well, you're asking me accounting questions.  
12 That's not quite fair.  
13 A. I am. Well, I'm sorry. I'm not an  
14 accountant. I'd have to ask and find out.  
15 Q. You don't know whether you were on a cash or  
16 an accrual basis?  
17 A. That's correct.  
18 Q. So you don't know whether this check from  
19 S.P. Richards Company, Inc., would have been  
20 reflected in the Harbin's, Inc., books and  
21 records at the end of 1999.  
22 A. That's correct.  
23 Q. But you've asked your accountant to look

## Deposition of Michael Harbin (I. II)

April 2, 2002

Page 222

1 into this.  
 2 A. That's correct.  
 3 Q. SouthTrust Bank check dated November 9th,  
 4 2001, for \$20,000.  
 5 A. Uh-huh (positive response).  
 6 Q. Is that a draw on the second mortgage at the  
 7 condominium at the beach?  
 8 A. I believe so.  
 9 Q. Okay. Now, when did you and Hope start  
 10 having marital difficulties?  
 11 A. Back in '96--  
 12 Q. When did you first --  
 13 A. -- '95.  
 14 Q. When did you first go to see a lawyer about  
 15 a divorce?  
 16 A. I'd have to ask Floyd.  
 17 Q. I think your earlier testimony, if it will  
 18 help refresh your recollection, was that  
 19 sometime in March or April of 2000 or 2001,  
 20 which was it, that you went to see  
 21 Mr. Minor?  
 22 A. I would have to check my -- If that's what I  
 23 said in my deposition, the dates, I -- I did

Page 223

1 not keep a record of it.  
 2 Q. Is it fair to say that -- When did you  
 3 decide you wanted a divorce? Let me  
 4 rephrase that question.  
 5 A. Hope and I had discussed it I believe it was  
 6 in 1997, and we had discussed the  
 7 possibility of divorce then.  
 8 Q. Did you go and meet with a lawyer in 1997?  
 9 A. No, sir.  
 10 Q. What act or actions or occurrence  
 11 precipitated your meeting with Mr. Minor in  
 12 2001?  
 13 A. It had reached a point between Hope and I  
 14 that I felt like for the betterment of the  
 15 children, Hope, and myself that we would  
 16 proceed with the divorce. And the action  
 17 that occurred to me personally is when I had  
 18 asked Hope to come help me work and she said  
 19 no.  
 20 Q. At the time you went to see Mr. Minor about  
 21 a divorce, there was no second mortgage on  
 22 the beach house at Seagrove.  
 23 A. That's correct.

Page 224

1 Q. All of the debt on the second mortgage,  
 2 which I believe -- You've said it was a  
 3 second mortgage, and I've asked to see a  
 4 copy of the mortgage. Have you ever been  
 5 able to find a copy of that mortgage?  
 6 A. Yeah. Yeah.  
 7 Q. You furnished me a note from SouthTrust but  
 8 not an actual mortgage that was signed.  
 9 A. Is the note signed by me?  
 10 Q. The note -- I believe the copy of the note,  
 11 I'm not sure whether it's signed, but it's  
 12 not -- it doesn't show that it's ever been  
 13 recorded.  
 14 Have you ever seen a copy of a recorded  
 15 second mortgage on the beach house?  
 16 A. I'm sure I have.  
 17 Q. Where did you see it?  
 18 A. At the closing office in Florida.  
 19 Q. It wouldn't have been recorded at that time.  
 20 You may have signed a mortgage.  
 21 A. Okay.  
 22 Q. Do you recall actually signing a mortgage?  
 23 Because earlier you said you didn't go to

Page 225

1 Florida for a closing; it was all handled  
 2 here in Montgomery.  
 3 A. The paperwork was handled here in  
 4 Montgomery. It was transferred to Florida.  
 5 Q. Okay. Did you go to Florida and sign some  
 6 additional paperwork?  
 7 A. I did.  
 8 Q. All right. When was that?  
 9 A. Whatever the date is on the note, I believe.  
 10 Q. June, July, August of 2001?  
 11 A. I'd have to look at the document to give you  
 12 an actual date.  
 13 Q. You don't recall.  
 14 Did Hope go to Florida and sign the  
 15 second mortgage?  
 16 A. No.  
 17 Q. And as I recall, you took some of the money  
 18 and paid Mr. Minor's retainer with it from  
 19 the second mortgage; is that correct?  
 20 A. I paid Mr. Minor with some of the money from  
 21 the second mortgage; that's correct.  
 22 Q. And this draw on the second mortgage of  
 23 \$20,000 would have been in November of 2001;



## Deposition of Michael Harbin, (Vol. II)

April 2, 2002

Page 226

1 is that correct?

2 A. That's the date of the check, yes.

3 Q. Okay. Well, you certainly couldn't have

4 spent this \$20,000 until you received the

5 check, could you?

6 A. That's correct.

7 Q. And Hope had already filed a petition for

8 divorce at the time you received this

9 \$20,000 check, had she not?

10 A. When was the date that y'all filed it?

11 Q. October, I believe.

12 A. All right. The mortgage or the note was in

13 place prior to the filing.

14 Q. But the check dated November 9th, 2001 --

15 MR. HENIG: Floyd, look at this.

16 (Brief recess.)

17 Q. (Mr. Henig continuing) Mr. Harbin, we've

18 looked, and I believe we filed or the

19 divorce documents were filed on October the

20 31st, and Mr. Minor accepted service around

21 November the 8th.

22 A. Okay.

23 Q. And you made a withdrawal of \$20,000 on the

Page 227

1 second mortgage on the condominium on

2 November the 9th. Do you recall what you

3 did with that \$20,000?

4 A. It was deposited into my checking account.

5 Q. And do you know what checks you wrote with

6 it?

7 A. I do not.

8 Q. Don't recall.

9 There's also a payment here of \$150

10 from Regions Bank, pay to the order of

11 Office Plus.

12 A. Uh-huh (positive response).

13 Q. What was that?

14 A. This man right here (indicating) stole a

15 computer. He was an employee. And this is

16 restitution that comes from Ellen Brooks'

17 office.

18 Q. Alvin Hall?

19 A. Right.

20 Q. By whom was Mr. Hall employed at the time he

21 stole the computer?

22 A. By me.

23 Q. In what business?

Page 228

1 A. Office Plus.

2 Q. Okay. So his paycheck came from Office

3 Plus, not from Michael Harbin, correct?

4 A. Correct.

5 Q. And this was restitution to Office Plus,

6 correct?

7 A. That's correct.

8 Q. And did you write Office Plus a check for

9 \$150 out of your account?

10 A. No, it was closed.

11 Q. Did you declare this as income?

12 A. I don't believe I did on that.

13 Q. Did you ask your accountants to check into

14 that?

15 A. They will be checking into all of this.

16 Q. The next deposits there are two checks,

17 again from Matt Rainer and from Eric Moore.

18 Who is Eric Moore?

19 A. He was an employee at Stern Brothers.

20 Q. Why was Mr. Moore paying you \$50?

21 A. I loaned him \$50.

22 Q. Another restitution check in the amount of

23 \$150, Regions Bank, on Alvin Hall, correct?

Page 229

1 A. Yes, sir.

2 Q. How many restitution checks did you receive?

3 A. I'm not sure. I believe he pays them on his

4 ability to pay.

5 Q. That's what most people do. But do you

6 remember how many checks you --

7 A. I'm not sure.

8 Q. Do you keep a ledger on Mr. Hall's

9 repayments?

10 A. I do not.

11 Q. How much did Mr. Hall steal from Office

12 Plus?

13 A. Gosh, it was -- I believe it was valued

14 maybe around 2,100.

15 Q. 2,100?

16 So his restitution would have been at

17 least that much?

18 A. I believe. I don't know for sure.

19 Q. There is another check in the amount of \$331

20 from S.P. Richards made payable to Harbin's,

21 Inc., and dated July 9th, 2001.

22 What is that check?

23 A. I believe that's a rebate check for being

## Deposition of Michael Harbin, I. II)

April 2, 2002

Page 230

1 some type of dealer, being in some type of  
 2 dealer program. I'm not sure.  
 3 Q. Harbin's, Inc., again, July the 9th of 2001  
 4 was a dormant corporation with no activities  
 5 whatsoever; is that correct?  
 6 A. That's correct.  
 7 Q. And you deposited that into your personal  
 8 account.  
 9 A. That's correct.  
 10 Q. Now, didn't you tell me, however, that  
 11 Harbin's, Inc., owned a percent of the  
 12 Harbin's building?  
 13 A. Yes, sir.  
 14 Q. Did you declare this check that you  
 15 deposited into your personal account as  
 16 income?  
 17 A. I have not filed my 2001 return yet.  
 18 Q. Do you consider it income to you personally?  
 19 A. Yes, sir.  
 20 Q. Who are the stockholders of Harbin's, Inc.?  
 21 A. Myself and my sister.  
 22 Q. Did you give your sister any portion of this  
 23 check?

Page 231

1 A. No, sir.  
 2 Q. Check number 146, that's another withdrawal  
 3 on SouthTrust Bank on the home equity dated  
 4 August the 3rd of '01 in the amount of  
 5 \$10,000.  
 6 Do you remember what you did with that  
 7 check?  
 8 A. No, sir. Well, I deposited it into my  
 9 checking account at AmSouth.  
 10 Q. Do you know the reason for making a draw  
 11 against the second mortgage on your wife's  
 12 home?  
 13 A. I would have to look at my bank statements  
 14 to see where the --  
 15 Q. What is DirectCare?  
 16 A. That was an insure -- That was our major  
 17 medical insurance carrier.  
 18 Q. What is Revest?  
 19 A. That's that company in Atlanta.  
 20 Q. Is this like a rebate check?  
 21 A. I believe so, yes, sir.  
 22 Q. Again made payable to Harbin's, Inc., March  
 23 24th of 2000, in the amount of \$1,598?

Page 232

1 A. Yes, sir.  
 2 Q. Or is that 90? It's either 90 or 98.  
 3 A. I think it's 98.  
 4 Q. Did you declare that as income?  
 5 A. I don't know. I don't think so.  
 6 Q. Again, a check payable to Harbin's, Inc.  
 7 A. Yes, sir.  
 8 Q. Do you remember giving your sister any  
 9 portion of this check?  
 10 A. No, I don't recall.  
 11 Q. April 25th of 2000, another S.P. Richards  
 12 check, this time in the amount of \$2,189.36.  
 13 Is that a rebate check?  
 14 A. Yes, sir.  
 15 Q. Again, it's made payable to Harbin's. Is  
 16 that Harbin's, Inc., or is that  
 17 Harbin's-Stern Brothers?  
 18 A. I believe that's Harbin's, Inc. And I  
 19 believe this is the -- what is called a  
 20 sub-column account for Office Plus. That's  
 21 why the check is smaller than the others.  
 22 COURT REPORTER: Excuse me. What  
 23 type account?

Page 233

1 A. I believe it's a rebate check for Office  
 2 Plus.  
 3 Q. Office Plus activity?  
 4 A. Right.  
 5 Q. Office Plus in April of 2000 had debts, did  
 6 it not?  
 7 A. Yes.  
 8 Q. And did you apply any of this \$2,189 toward  
 9 any of the debts of Office Plus?  
 10 A. I don't know. I'd have to look at my bank  
 11 statements.  
 12 Q. Do you recall having done that?  
 13 A. I don't recall.  
 14 Q. Mr. Harbin, do you take any prescription  
 15 drugs on a regular basis?  
 16 A. I do.  
 17 Q. What prescription drugs do you take?  
 18 A. I take the generic for Xanax.  
 19 Q. Okay. What's the name of that generic? Do  
 20 you recall?  
 21 A. I can't -- It's Alapalaza [sic] or  
 22 something. I can't pronounce it.  
 23 Q. Who prescribes Xanax for you? Which

## Deposition of Michael Harbin, (Vol. II)

April 2, 2002

Page 234

- 1 physician?
- 2 A. Dr. Schaffer.
- 3 Q. Where is Dr. Schaffer's office?
- 4 A. He's out in, is it Fain Park?
- 5 Q. Fain Park?
- 6 A. Yeah. Over there across from Fain Park.
- 7 Q. What type doctor is Dr. Schaffer?
- 8 A. He is a --
- 9 Q. Endocrinologist?
- 10 A. No, sir. He's a psychologist, I believe.
- 11 D.O., something. Ph.D.O.
- 12 Q. Doctor of psychology.
- 13 Do you recall his first name?
- 14 A. David.
- 15 Q. When did he first prescribe Xanax for you?
- 16 A. Maybe two years ago.
- 17 Q. And how often do you take it?
- 18 A. My prescription is three times a day or --
- 19 Three times a day is my prescription, but
- 20 typically maybe a half a pill to one a day,
- 21 if needed.
- 22 Q. What milligram dosage are you prescribed?
- 23 A. .5.

Page 235

- 1 Q. And for what condition is this Xanax?
- 2 A. General anxiety.
- 3 Q. Have you seen any other physicians for
- 4 general anxiety?
- 5 A. I have.
- 6 Q. What other physicians have you seen?
- 7 A. Dr. Ed Givhan.
- 8 Q. Anyone else?
- 9 A. There was -- Before Ed retired, there's
- 10 another doctor. I think her name was
- 11 Wiskett or Wishett. I don't recall her
- 12 name.
- 13 Q. Do you remember her first name?
- 14 A. Linda, maybe.
- 15 Q. And what did you see Dr. Wishett for?
- 16 A. Just general anxiety.
- 17 Q. Did she subsequently retire?
- 18 A. I believe she moved.
- 19 Q. Do you remember what kind of a physician
- 20 Dr. Wishett was?
- 21 A. I think she was a psychologist.
- 22 Q. Ph.D. rather than M.D.?
- 23 A. I believe she might have been an M.D.

Page 236

- 1 Q. So would have been a psychiatrist?
- 2 MR. MINOR: Don't guess if you
- 3 don't know.
- 4 A. I don't know.
- 5 Q. You don't know.
- 6 A. Something D.O. I don't know what that
- 7 means.
- 8 Q. Any other physicians other than Dr. Givhan,
- 9 Dr. Wishett, and Dr. Schaffer?
- 10 A. Before that I was -- did see a psychiatrist,
- 11 Dr. Claude Holland.
- 12 Q. For what condition?
- 13 A. Just anxiety.
- 14 Q. When did you first see Dr. Holland?
- 15 A. That's when I lived in Birmingham, and it
- 16 was in '88, maybe, '89.
- 17 Q. This is a condition that you've had before
- 18 your marriage, then, to Hope Harbin.
- 19 A. That's correct.
- 20 Q. Were you taking Xanax at the time of your
- 21 marriage to Hope Harbin?
- 22 A. I was.
- 23 Q. And is Dr. Holland's practice in Birmingham?

Page 237

- 1 A. He's retired. He's no longer in practice.
- 2 Q. Was it in Birmingham?
- 3 A. Yes, sir.
- 4 Q. Who is the first physician you saw regarding
- 5 your general anxiety in Montgomery, Alabama?
- 6 A. I believe it was Linda Wishett.
- 7 Q. Who recommended her to you or who referred
- 8 her to you or you to her?
- 9 A. I believe she was on our -- not DirectCare
- 10 at the time, but we had another medical
- 11 carrier that had a list of doctors, and I
- 12 just picked her out of them.
- 13 Q. Okay. Other than Ed Givhan, Linda Wishett,
- 14 and David Schaffer, have you seen any other
- 15 physicians in Montgomery, Alabama for
- 16 anxiety?
- 17 A. No, sir.
- 18 Q. Have you seen any other physicians for any
- 19 other medical condition since your --
- 20 MR. MINOR: At any time?
- 21 Q. -- marriage to Hope Harbin? I don't want to
- 22 know about childhood diseases.
- 23 MR. MINOR: You're not talking

Deposition of Michael Harbin, J. II)

April 2, 2002

Page 238

- 1 about colds and that sort of  
2 thing?  
3 MR. HENIG: No.  
4 Q. Well, we could talk about colds. Who does  
5 your general physicals, your annual  
6 physicals?  
7 A. Well, it was Ed up until he retired six  
8 months ago.  
9 Q. Have you been to anybody since Ed Givhan?  
10 A. I have not. I have not.  
11 Q. Other than Ed Givhan, have you seen any  
12 other physicians for any condition  
13 whatsoever or has Ed Givhan referred you to  
14 any other physicians?  
15 A. He has.  
16 Q. What physicians and for what?  
17 A. My son and I were roughhousing and he kicked  
18 me in my back, and I had to go get a CAT  
19 scan. And there was some doctor over at  
20 Jackson that looked at the thing.  
21 Q. A radiologist?  
22 A. A radiologist, but I don't recall his name.  
23 Q. Were you ever referred to any other -- to an

Page 239

- 1 orthopedic surgeon or a neurosurgeon?  
2 A. I am flatfooted and I do see a podiatrist in  
3 Birmingham, Dr. Calcaterra.  
4 Q. Anybody else?  
5 A. Off the top of my head, I don't recall.  
6 Q. Do you consume alcoholic beverages?  
7 A. I do.  
8 Q. How often do you consume alcoholic  
9 beverages?  
10 A. Several times throughout the course of a  
11 week.  
12 Q. What types of alcohol do you drink?  
13 A. Wine occasionally, very little beer and  
14 either scotch or bourbon.  
15 Q. Do you drink vodka?  
16 A. I have.  
17 Q. How often do you go to the Alcoholic  
18 Beverage Control store to purchase alcohol?  
19 A. It depends on the size of alcohol I  
20 purchase. If I buy a handle, it could be a  
21 week or two. If I go in there and buy a  
22 little pint, it could be a couple of times a  
23 week.

Page 240

- 1 Q. Do you pay cash or do you charge your  
2 alcohol purchases at the ABC store?  
3 A. I have done both, but mostly it's cash.  
4 Q. Do you write a check for cash or do you  
5 withdraw cash from the ATM and then go  
6 purchase alcohol?  
7 A. I think if I have cash on me, I would pay  
8 from my wallet. If I don't, I would go to  
9 the ATM.  
10 Q. Do you go to the ATM for any purpose other  
11 than to withdraw cash to purchase alcohol?  
12 A. Do I go to the ATM for any other purpose --  
13 Q. Right.  
14 A. -- other than to purchase alcohol?  
15 Q. Right, to withdraw cash with which to  
16 purchase alcohol.  
17 A. I go to the ATM to withdraw cash, yes.  
18 Q. To purchase alcohol.  
19 A. Not just to purchase alcohol, no.  
20 Q. And you use the cash for other purposes?  
21 A. Yes.  
22 Q. Which ATM do you go to?  
23 A. Whatever is convenient.

Page 241

- 1 Q. Which store do you purchase -- Which ABC  
2 store do you purchase alcohol?  
3 A. It depends. If there is one closed or open,  
4 what's most convenient for me wherever I am.  
5 Q. Which one is generally most convenient for  
6 you?  
7 A. I would say either the one on Zelda or the  
8 one on Decatur.  
9 Q. There was one on Decatur. It's since  
10 closed, I believe.  
11 A. The one across from Jim Massey.  
12 Q. Oh, from Jim Massey. Okay. All right.  
13 A. Yeah.  
14 Q. And the one on Zelda, is that located in the  
15 same proximity as an ATM?  
16 A. It's -- Yes, it's surrounded by ATMs.  
17 Q. How much alcohol have you purchased in the  
18 last two weeks?  
19 A. I don't know.  
20 Q. How much have you purchased this week?  
21 Today is Tuesday.  
22 A. None.  
23 Q. Do you recall making any purchases from the



## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 242

1 ABC store last week?

2 A. I might have. I don't keep track of when I

3 go into the ABC store.

4 Q. Now, Mr. Harbin, you have admitted to your

5 wife to having an affair with Jackie Parks;

6 is that correct?

7 A. That's correct.

8 Q. When did your sexual relations with Jackie

9 Parks first begin?

10 A. In 2000.

11 MR. HENRY: John, do you foresee

12 any more questions on the

13 financial stuff?

14 MR. HENIG: No, Mitch, I'm done

15 with that.

16 MR. HENRY: All right.

17 MR. HENIG: I'm going to ask him

18 about Jackie Parks and I'm

19 going to ask him about some

20 physical altercations and I'm

21 going to ask him about the use

22 of the beach house and I'm

23 going to ask him about some

Page 243

1 pornographic materials on his

2 computers and I'm going to ask

3 him about Frequent Flyer miles.

4 If you want to sit through any

5 of those, you're certainly

6 welcome to do so.

7 MR. HENRY: I'll pass. If y'all

8 have to get back with financial

9 stuff, these are my numbers

10 there, my cell phone,

11 et cetera.

12 MR. HENIG: I'll remember, and

13 we'll put you on the speaker

14 phone if it's necessary.

15 MR. HENRY: Hopefully we won't

16 have to. Thank y'all for

17 letting me sit in.

18 MR. HENIG: You're quite welcome.

19 (Discussion held off the Record.)

20 (Mr. Henry no longer present.)

21 Q. (Mr. Henig continuing) Let's go back to the

22 last question I had asked, and I think it

23 was when in the year 2000 did your sexual

Page 244

1 affair with Jackie Parks begin?

2 A. Summertime maybe.

3 Q. Where did it begin?

4 A. At my office.

5 Q. Do you have a bedroom in your office?

6 A. No, sir.

7 Q. Where in your office did it begin?

8 A. I believe in our showroom.

9 Q. Now, Jackie at the time was married to Lee

10 Parks; is that correct?

11 A. That's correct.

12 Q. And Jackie in May of 2000 had a child, Lee

13 Chapman.

14 A. That's correct.

15 Q. Did your affair with Jackie begin before Lee

16 Chapman's birth or after Lee Chapman's

17 birth?

18 A. It was after.

19 Q. Tell me the circumstances that caused the

20 affair to begin.

21 A. It's unfortunate, but it's sad, and I know

22 how those things now occur. We were -- Hope

23 and I were not getting along. Lee and

Page 245

1 Jackie were not getting along. Jackie and I

2 were working closely together at work. At

3 the time, she was the only college-educated

4 person I had down there with the same

5 socioeconomic background. I would hear

6 about her problems with Lee. I shared my

7 problems with her about Hope. Hope and I

8 continued to drift apart. I think Jackie

9 and Lee continued to drift apart. Jackie

10 was working very hard for Harbin's, and both

11 of us were unhappy, and one thing led to

12 another.

13 Q. When did you tell Hope of this affair?

14 Assume that she filed the petition for

15 divorce October 31st, 2001, if that will

16 help you with a time frame.

17 A. Yeah. And I'm sorry if I'm slow on times.

18 I've been, as you can imagine, trying to put

19 all this stuff together.

20 Q. You can only testify as to what you recall.

21 A. Right.

22 Q. And that's all I want.

23 A. And if I'm wrong on some of these dates, I'm

Deposition of Michael Harbin (I. II)

April 2, 2002

Page 246

1 wrong.  
 2 Q. That's why I'm trying to give you the time  
 3 frame.  
 4 A. Okay. What was your question again?  
 5 Q. We have an affair that started in the summer  
 6 of 2000.  
 7 MR. MINOR: When did you tell Hope  
 8 it started.  
 9 A. Oh, Hope had -- Was it in July 2001?  
 10 Q. So it had been going on for about twelve  
 11 months at the time you were confronted by  
 12 your wife and said, yeah, I hate it, but  
 13 it's true.  
 14 A. Correct.  
 15 Q. Tell me of being confronted by Hope.  
 16 A. She came into my office, and we were going  
 17 out to eat. And she was acting very nervous  
 18 and very upset. And she was sitting in my  
 19 office on my sofa, and I was sitting in my  
 20 chair at my desk. And she said that she  
 21 knew that there was something going on and  
 22 if I would just admit it, we would get a  
 23 divorce and go on about our lives. And I

Page 247

1 said -- I can't recall what I said. I asked  
 2 her to please tell me what you know or what  
 3 you may think, and she said I just know -- I  
 4 know you're having an affair with Jackie.  
 5 Would you just -- If you would admit it, we  
 6 can go on.  
 7 So I sat back at my desk and I slammed  
 8 my hand down on my (indicating) -- sat back  
 9 in my chair and I slammed my hand down  
 10 (indicating) on the table and I said, Hope,  
 11 you're right, I've had an affair with Jackie  
 12 Parks. And I said, I'm sorry, but it  
 13 occurred. And right then Hope got up,  
 14 walked behind my desk, got on the phone and  
 15 called Laurie and Skip Parks, had them on  
 16 the speaker phone. And Hope went on to tell  
 17 them that I had made an admission or I had  
 18 admitted to the affair. And I told that to  
 19 Laurie and Skip Parks. And Haygood  
 20 Poundstone actually answered the phone, and  
 21 I told Haygood. And I apologized both to  
 22 Skip and Laurie and told them I was very  
 23 sorry that it had occurred.

Page 248

1 Hope then said she had taped the call  
 2 and she was running out the door because she  
 3 was afraid something may happen. And then  
 4 she ran out the door.  
 5 Q. Did y'all attempt marriage counseling?  
 6 A. We did.  
 7 Q. With whom?  
 8 A. Don Hill.  
 9 Q. Okay. When did your marriage counseling  
 10 begin with Don Hill?  
 11 A. Prior to the admission and afterwards, we  
 12 continued to go.  
 13 Q. Sometime within a few weeks or days of the  
 14 admission --  
 15 A. Yes, sir.  
 16 Q. -- to sometime after?  
 17 A. Yes, sir.  
 18 Q. When did you decide you actually wanted a  
 19 divorce and that you couldn't reconcile with  
 20 Hope?  
 21 A. Jackie and I had spoken after it all had  
 22 come out on the table, and she felt like she  
 23 had an obligation to her child to try to

Page 249

1 reconcile with Lee. I felt like I had an  
 2 obligation with my children to try to  
 3 reconcile with Hope. Hope and I continued  
 4 to go to counseling, but the situation in  
 5 the household for me had become very, very  
 6 tense. I feel like the element of trust was  
 7 completely gone, and it would be very hard  
 8 to rebuild. We --  
 9 Q. Well, let me ask you this, Mr. Harbin.  
 10 A. Okay.  
 11 Q. During the time that you were going to  
 12 counseling with Hope, were you still having  
 13 sexual intercourse with Jackie Parks?  
 14 A. No, sir.  
 15 Q. When did your sexual relationship with  
 16 Jackie Parks resume? If it was stopped in  
 17 July when you were confronted by Hope, when  
 18 did you and Jackie resume your sexual  
 19 intercourse?  
 20 A. I don't recall. Months.  
 21 Q. By October of 2001, had your relationship  
 22 with Jackie resumed?  
 23 A. I don't know the exact date.

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 250

- 1 Q. Well, by Thanksgiving 2001, had your sexual  
2 relationship with Jackie Parks resumed?  
3 A. Thanksgiving, yes.  
4 Q. And does it continue to today?  
5 A. Yes.  
6 Q. Now, your first sexual intercourse with  
7 Jackie Parks was in the summer of 2000, I  
8 believe you testified, at Harbin's, Inc.  
9 Have you had sexual intercourse with Jackie  
10 Parks or did you have sexual intercourse  
11 with Jackie Parks in 2000 at the beach  
12 condominium in Seagrove, Florida?  
13 A. In 2000?  
14 Q. Yes, in the year 2000.  
15 A. I don't think so.  
16 Q. Did you have sexual intercourse with Jackie  
17 Parks while your wife and children were  
18 staying at the condominium in Florida? I'm  
19 talking about that you and Jackie Parks --  
20 do you remember -- Let me back up. That was  
21 a horrible question.  
22 MR. MINOR: Have we ended it?  
23 MR. HENIG: We've ended that

Page 252

- 1 A. Not that I recall.  
2 Q. Let me ask you this. Is there any reason  
3 you wouldn't be able to recall having had  
4 sexual intercourse with Jackie Parks?  
5 A. Other than I don't keep dates, times.  
6 MR. MINOR: He's already testified  
7 it first started in 2000.  
8 MR. HENIG: I understand that.  
9 But now he says he doesn't  
10 recall as to whether or not it  
11 may have happened in '99, and  
12 I'm just trying to --  
13 MR. MINOR: No.  
14 Q. Wasn't that your testimony just two seconds  
15 ago, that you don't recall whether or not it  
16 may have occurred in 1999?  
17 A. You asked me if I had intercourse in '99,  
18 and I said I don't recall.  
19 Q. With Jackie Parks.  
20 A. Right.  
21 Q. You cannot recall whether or not in 1999 you  
22 had sexual intercourse with Jackie Parks.  
23 A. Again, I don't recall.

Page 251

- 1 conglomeration, and we're going  
2 to start a new one.  
3 THE WITNESS: Okay.  
4 Q. Do you recall Jackie Parks baby-sitting for  
5 your children in the year 2000 when you and  
6 Hope Harbin were vacationing at your  
7 condominium at Seagrove?  
8 A. No.  
9 Q. You do not remember Jackie Parks --  
10 A. No, she didn't baby-sit in 2000.  
11 Q. When did she baby-sit?  
12 A. Sometime prior to that.  
13 Q. Were you having sexual intercourse with her  
14 at the time that she baby-sat for your  
15 children?  
16 A. No, sir.  
17 Q. You remember which time I'm talking about at  
18 Seagrove, Florida.  
19 A. I believe that was in '99.  
20 Q. In '99.  
21 And your testimony is that there was no  
22 sexual relationship between the two of you  
23 in 1999.

Page 253

- 1 Q. Okay. So is the answer to my question, yes,  
2 you were correct, I cannot recall whether --  
3 A. Yes, I cannot recall. I do not recall. I  
4 don't know.  
5 Q. You're not testifying that you did not.  
6 A. I'm saying I don't know.  
7 Q. During your marriage to Hope Harbin, have  
8 you had sexual intercourse with anyone other  
9 than Jackie Parks?  
10 A. No.  
11 Q. Have you purchased any gifts for Jackie  
12 Parks?  
13 A. Yes.  
14 Q. Tell me the gifts that you recall having  
15 purchased for Jackie Parks.  
16 A. A West Bend coffee percolator and a set of  
17 earrings.  
18 Q. What type earrings?  
19 A. Platinum earrings.  
20 Q. Did they have any stones or gems?  
21 A. They had some diamonds in them, very small  
22 ones.  
23 Q. From whom did you purchase these diamond

## Deposition of Michael Harbin, J. II)

April 2, 2002

Page 254

1 earrings?  
 2 A. It was a company in Atlanta.  
 3 Q. Do you remember the price of those diamond  
 4 earrings?  
 5 A. I think they were \$190.  
 6 Q. Do you remember for what purpose, what  
 7 occasion?  
 8 A. A Christmas gift.  
 9 Q. Christmas of what year?  
 10 A. This year.  
 11 MS. HARBIN: I'm going to have to  
 12 take a break.  
 13 MR. HENIG: Okay. Take a break.  
 14 We'll take a short break.  
 15 MR. MINOR: Okay.  
 16 (Brief recess.)  
 17 Q. (Mr. Henig continuing) Let me ask you one  
 18 thing I forgot to ask earlier.  
 19 A. Okay.  
 20 Q. And I don't know if you brought it or not  
 21 because I was marking things.  
 22 A. Yes, sir.  
 23 Q. I asked you for an inventory of the assets

Page 255

1 from your father's estate --  
 2 A. I don't have it.  
 3 Q. -- that you received.  
 4 A. Yes. I don't have it.  
 5 Q. Who has that? There has to be an inventory.  
 6 A. Is it not in the will?  
 7 Q. No.  
 8 A. Let me call --  
 9 Q. Write it down.  
 10 A. Let me call the people that did the stuff.  
 11 Q. The estate taxes. I don't want to subpoena  
 12 this stuff if I can possibly avoid having to  
 13 do that.  
 14 A. Right.  
 15 Q. But as Mr. Minor will tell you, I've got to  
 16 give notice of the intent to subpoena if  
 17 I'm -- I really don't want to have everybody  
 18 digging through your stuff if you can ask  
 19 them.  
 20 A. Let me make a call.  
 21 Q. Would you please let me know by Monday  
 22 whether or not you've gotten that and the  
 23 other documents.

Page 256

1 A. I'll try to do that sooner.  
 2 Q. Thank you. I'm sorry. That was just one  
 3 other thing I -- I know I covered it --  
 4 MR. MINOR: He's looked. He  
 5 doesn't have it. He's going to  
 6 try to get it.  
 7 MR. HENIG: I understand. But as  
 8 you know and we've explained to  
 9 clients before, it doesn't  
 10 matter whether you've got it if  
 11 you've got the ability to get  
 12 it.  
 13 MR. MINOR: Was the will probated  
 14 here?  
 15 THE WITNESS: Yes.  
 16 MR. HENIG: It was.  
 17 MR. MINOR: There ought to be one  
 18 in the probate file.  
 19 MR. HENIG: Not necessarily.  
 20 There might be an inventory of  
 21 the assets in the probate file  
 22 but not necessarily how they  
 23 were ultimately distributed

Page 257

1 because Mary Ann agreed that  
 2 certain of the assets would be  
 3 given to Michael. They worked  
 4 out something, and I'll ask him  
 5 about it on the Record. That's  
 6 fine, you know, if he'll get me  
 7 the inventory.  
 8 THE WITNESS: Sure.  
 9 Q. But under the terms of your father's will,  
 10 the bulk of your father's estate was left to  
 11 your sister, wasn't it?  
 12 A. That's correct.  
 13 Q. And he said in the preamble or the beginning  
 14 of his will it was because you had already  
 15 received the stock in Harbin's, Inc., and he  
 16 was trying to equal out his estate between  
 17 you and your sister.  
 18 A. That's correct, in the preamble.  
 19 Q. But, in fact, you and your sister reached  
 20 some agreement to divide the assets of your  
 21 father's at the time of his death.  
 22 A. That's correct.  
 23 Q. And y'all divided them on basically a 50-50



## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 258

1 basis.  
 2 A. That's correct.  
 3 Q. And you then received more than you would  
 4 have under the will and she received less  
 5 than she would have under the terms of your  
 6 father's will.  
 7 A. Yes, depending on how liquid you would call  
 8 Harbin's at the time.  
 9 Q. Exactly. But you did receive some assets.  
 10 A. Right.  
 11 Q. About \$425,000 worth of assets is my  
 12 recollection.  
 13 A. Best --  
 14 Q. Is that about right?  
 15 A. Yes.  
 16 MR. MINOR: In addition to the  
 17 Harbin's stock or --  
 18 MR. HENIG: Yes.  
 19 THE WITNESS: The Harbin's stock I  
 20 purchased.  
 21 MR. HENIG: He had already  
 22 purchased it.  
 23 MR. MINOR: I know, but I'm just

Page 259

1 trying to clarify what you  
 2 actually received.  
 3 MR. HENIG: Right. I believe  
 4 there was some insurance  
 5 proceeds --  
 6 THE WITNESS: Policies.  
 7 MR. HENIG: -- and policies, and  
 8 there was some cash that  
 9 Michael received.  
 10 Q. Do you remember how much actual cash you  
 11 received from your father's estate?  
 12 A. John, I don't. Maybe 300,000.  
 13 Q. Have you since -- And that was in 1998,  
 14 1999?  
 15 A. No, sir. He died in '97.  
 16 Q. Right. But you didn't actually receive the  
 17 monies until sometime later.  
 18 A. We did. I believe we received some in '97,  
 19 and he died in June of '97. So during that  
 20 seven-month period, we received cash  
 21 proceeds from the life insurance policies.  
 22 And it probably did spill over into '98. I  
 23 don't know. I'd have to look at it. I

Page 260

1 don't know if the return --  
 2 Q. During '98, '99, 2000, 2001, you've spent  
 3 whatever you received.  
 4 A. Yes. Not the whole entire amount, but, yes,  
 5 I've spent it.  
 6 Q. The balance of it, I assume, is in the  
 7 Fidelity account.  
 8 A. That's correct.  
 9 Q. Which is now 60, \$70,000?  
 10 A. It's less than that. It's --  
 11 Q. Okay. And at the time of your father's  
 12 death, what was the debt on the Harbin's  
 13 building, the mortgage on it?  
 14 A. I'd have to go back --  
 15 Q. Wasn't it about 200,000?  
 16 A. On the Harbin building?  
 17 Q. Yes.  
 18 A. No, sir. It was close to 700 and something  
 19 thousand.  
 20 Q. It was 200,000 at the time you acquired the  
 21 Harbin's, Inc., stock, and you had to  
 22 leverage it, I believe, as part of the  
 23 buyout to the family. Is that fair?

Page 261

1 A. There was no debt on the property at the  
 2 time I acquired the stock.  
 3 Q. And you acquired the stock when?  
 4 A. March of '90.  
 5 Q. All right. I think we had discussed -- we  
 6 were discussing gifts, I believe the  
 7 Christmas gift to Jackie. Wasn't that the  
 8 last question that I had asked?  
 9 Mr. Harbin, have you and Jackie Parks  
 10 discussed marriage, your marriage to each  
 11 other?  
 12 A. We have.  
 13 Q. And tell me of those discussions.  
 14 A. Just maybe one day, but there's no immediate  
 15 plans or anything right now.  
 16 Q. You know, when a divorce is going on,  
 17 lawyers hear all sorts of things from all  
 18 sorts of different people when people who  
 19 love to talk find out that we're  
 20 representing one party or another.  
 21 A. Uh-huh (positive response).  
 22 Q. And I hate to use the surname of "someone,"  
 23 but someone told me that you and Jackie

Deposition of Michael Harbin J. II)

April 2, 2002

Page 262

- 1 Parks had looked at some real estate
- 2 together, a home.
- 3 A. Uh-huh (positive response).
- 4 Q. Have you?
- 5 A. Not together, no.
- 6 Q. Did you look at a home and then ask Jackie
- 7 to go look at it afterwards or vice versa?
- 8 Did she look at one and ask you to go look
- 9 at it?
- 10 A. I think those occasions -- both of those
- 11 occasions occurred.
- 12 Q. Tell me what real estate those occasions
- 13 occurred.
- 14 A. It's been a while. I looked at a house in
- 15 McGehee Estates, and then I looked at that
- 16 house on Myrtlewood.
- 17 Q. Both of those houses either Jackie had
- 18 looked at first and then asked you to go
- 19 look at or you had looked at and asked
- 20 Jackie to go look at the home?
- 21 A. I was looking at trying to get a new home
- 22 for myself.
- 23 Q. I understand.

Page 263

- 1 A. And I believe I went and looked, and she
- 2 might have -- I haven't looked at anything
- 3 really in a while, but she said, hey,
- 4 there's a house in McGehee Estates that may
- 5 be suitable for you and your children, so I
- 6 looked at it. I've looked at it.
- 7 Q. Did she ever tell you there was a house that
- 8 might be suitable for us after we get
- 9 married for you to go look at?
- 10 A. We in the past have talked about if we were
- 11 to get married, the need for a house would
- 12 not be that big.
- 13 Q. Has Jackie looked at any houses that she
- 14 told you would be suitable for you and
- 15 Jackie?
- 16 A. No, sir.
- 17 Q. Okay. Mr. Harbin, have you on occasions
- 18 been in possession of pornographic
- 19 materials?
- 20 A. Yes, sir.
- 21 Q. Have you acquired pornographic materials or
- 22 viewed pornographic materials over the
- 23 Internet?

Page 264

- 1 A. I have.
- 2 Q. And are there certain Internet sites that
- 3 are pornographic in nature that you have
- 4 visited on the Internet?
- 5 A. There have been, yes.
- 6 Q. What sites are those?
- 7 A. I -- John, every time I sign online, there's
- 8 some junk pornography, random e-mail that
- 9 you get and you click on.
- 10 Q. Well, I don't know how you got on their list
- 11 because they don't send me anything.
- 12 A. Well, my friends float that stuff around.
- 13 Q. So you have friends that e-mail pornographic
- 14 materials to you.
- 15 A. No, they e-mail you a link to a site.
- 16 Q. Okay.
- 17 A. Some of Hope's friends have done it, my
- 18 friends.
- 19 Q. Have you ever gone to any specific
- 20 pornographic sites on a regular basis?
- 21 A. Yes, I have.
- 22 Q. What sites are those, please, sir?
- 23 A. I'm trying to remember the names of them.

Page 265

- 1 One a friend of mine told me about is called
- 2 like Voyeur Web.
- 3 Q. Okay. Any others?
- 4 A. God, I mean, you just --
- 5 Q. Well, let me ask you this question and see
- 6 if I can help you with it a little bit.
- 7 A. Okay.
- 8 Q. Does your software -- your computer software
- 9 for your Internet Explorer have a favorites
- 10 section where you can visit a site, add it
- 11 to your favorites, and then all you have to
- 12 do is mash favorites and go to that
- 13 location?
- 14 A. Yes, sir.
- 15 Q. Have you listed any pornographic sites in
- 16 the favorites section of yours?
- 17 A. No, sir.
- 18 Q. Not at any time.
- 19 A. Not at any time that I recall, no, sir.
- 20 Q. Would you recall if you had, in fact, listed
- 21 in your favorites section a pornographic
- 22 site?
- 23 A. If I recalled, yes, but I don't recall.

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 266

- 1 Q. No, no. My question was, if you had listed
- 2 such a site, would you recall that?
- 3 A. If I had listed a site, I would think I'd be
- 4 able to recall it.
- 5 Q. And it's your testimony that you have --
- 6 that you just -- to your knowledge, you've
- 7 never listed any sites in your favorites
- 8 section.
- 9 A. Not that I recall, no.
- 10 Q. And if you can't recall one, you certainly
- 11 would be able to recall multiple
- 12 pornographic sites listed in your favorites
- 13 section, would you not?
- 14 A. Say that again, please.
- 15 Q. You would be able, would you not, to recall
- 16 if you had multiple pornographic sites under
- 17 your favorites category?
- 18 A. If I had recorded multiple sites, would I be
- 19 able to recall that.
- 20 Q. Yes.
- 21 A. In my favorites section.
- 22 Q. Right.
- 23 A. If I recorded those.

Page 267

- 1 Q. Yes.
- 2 A. Yes, I would be able to recall that.
- 3 Q. Okay. And you have no recollection of ever
- 4 having done so.
- 5 A. No, sir.
- 6 Q. What sites are currently listed in your
- 7 favorites on your computer?
- 8 A. Fidelity, AmSouth, Colonial, Bloomberg, CNN,
- 9 eBay, BellSouth, Delta.com, Detroit Hummer,
- 10 Allan's Red Hummer Page, Colonial Web Biz,
- 11 Monster.com -- excuse me, Movingmonster.
- 12 That's to follow mortgage rates.
- 13 Theweatherchannel.com, Garrett Realty.com.
- 14 Q. Excuse me. Garrett Realty, those are the
- 15 people who handle the condominium rentals
- 16 for you at the beach?
- 17 A. Yes, sir.
- 18 That's the primary ones that come off
- 19 the top of my head. My finance ones are at
- 20 the top.
- 21 Q. Right.
- 22 A. Steelcase.com.
- 23 Q. That's your business?

Page 268

- 1 A. Business.
- 2 Q. Steelcase is your main line.
- 3 A. Line.
- 4 Q. Do you have a franchise for Steelcase?
- 5 A. No, sir. They don't have franchises, just
- 6 to answer that.
- 7 Q. They don't have them. Okay. That was
- 8 almost a business question for which we
- 9 needed to call Henry, but --
- 10 A. Those are the immediate ones that pop out in
- 11 my head.
- 12 Q. And those are because those -- you keep on
- 13 your favorites section sites that you go to
- 14 and visit on a regular basis.
- 15 A. That's correct.
- 16 Q. That are either business related or with the
- 17 weather --
- 18 A. Right.
- 19 Q. -- or things that you have a direct interest
- 20 in; i.e., Hummers.
- 21 A. Correct.
- 22 Q. And those would be the only sites that you
- 23 would have under your favorites heading on

Page 269

- 1 the Internet?
- 2 A. Those are all that I recall right now. I
- 3 have some more, but I don't -- There are
- 4 some more Hummer sites. I think there's
- 5 Humvee.net.
- 6 Q. But all related to things that you have a
- 7 personal and daily interest in.
- 8 A. That's correct.
- 9 Q. And a very keen interest in, otherwise you
- 10 wouldn't save them, correct?
- 11 A. Some are keen, yes.
- 12 Q. Have you ever on occasion -- on any occasion
- 13 printed out pornographic material from the
- 14 Internet?
- 15 A. No, sir, not that I recall. I have a
- 16 printer.
- 17 Q. Now, the pornographic sites that you have
- 18 visited on the Internet, what type
- 19 pornography is found on those sites?
- 20 A. Adult, like Playboy-type stuff.
- 21 Q. Well, it is females primarily or is it male
- 22 and female or what type sites are these?
- 23 A. It's female.

Deposition of Michael Harbin J. II)

April 2, 2002

Page 270

- 1 Q. Have you shown Hope any of these sites?
- 2 A. No, but she's shown me.
- 3 Q. What did she show you?
- 4 A. She typed in some web site one night and
- 5 pulled it up that I could not recognize and
- 6 said that I had been there.
- 7 Q. So she showed you a site that she said you
- 8 had visited on the Internet before.
- 9 A. That's correct.
- 10 Q. And you had no recollection of having been
- 11 there.
- 12 A. That's correct.
- 13 Q. What did that site have on it?
- 14 A. I'm not sure. I saw it only briefly till
- 15 the computer hit the floor.
- 16 Q. In other words, Hope was not happy with your
- 17 actions at that time.
- 18 A. She was not happy, I guess, with my
- 19 explanation when I said I don't --
- 20 Q. I don't recall?
- 21 A. -- I don't know of this site.
- 22 Q. Do you remember when this occurred?
- 23 A. I think I was still living in the house at

Page 271

- 1 the time.
- 2 Q. When did you move out of the house?
- 3 A. Labor Day weekend.
- 4 Q. September 2001?
- 5 A. Yes, sir.
- 6 Q. Mr. Harbin, is it fair to say that you and
- 7 Hope over the last five or six years have
- 8 had arguments over your viewing pornographic
- 9 materials?
- 10 A. No.
- 11 Q. This is it? What you've just discussed with
- 12 us is the only time that Hope has ever shown
- 13 you a pornographic site and expressed
- 14 knowledge that you had visited that site?
- 15 A. The only time Hope has ever even mentioned
- 16 me looking at Internet sites --
- 17 Q. Uh-huh (positive response).
- 18 A. -- is when our divorce started coming up,
- 19 and she was saying I was doing it in front
- 20 of the children.
- 21 Q. Okay. And you deny having done that in
- 22 front of the children.
- 23 A. I've never done that in front of the

Page 272

- 1 children.
- 2 Q. And you would agree that that is totally
- 3 inappropriate behavior.
- 4 A. It most certainly is.
- 5 Q. Now, have you and Hope ever had an argument
- 6 over your alcohol use?
- 7 A. No, sir.
- 8 Q. Has she ever suggested that you abused
- 9 alcohol?
- 10 A. Yes, sir.
- 11 Q. Okay. When did she suggest that you abused
- 12 alcohol?
- 13 A. Well, now I'm a raging drunk during our
- 14 proceedings, you understand.
- 15 Q. I'm -- I understand that after the filing of
- 16 the divorce, you have had many discussions
- 17 about your use --
- 18 A. Right.
- 19 Q. -- or abuse -- her belief that you have
- 20 abused alcohol.
- 21 A. Correct.
- 22 Q. I'm talking about at the time that you were
- 23 still living under the same roof. From the

Page 273

- 1 time you got married until the time of your
- 2 separation, Labor Day 2001, did you and Hope
- 3 ever have any discussions where she
- 4 expressed her concern over your alcohol
- 5 intake?
- 6 A. No, sir. Just quite the opposite.
- 7 Q. What do you mean by that?
- 8 A. Well, for Christmas she would give me
- 9 decanters that you would -- decorative
- 10 decanters that you would put scotch or
- 11 bourbon in. For my birthday she gave me a
- 12 wine rack that you stock full of wine. One
- 13 Christmas she gave me a wine opener, and it
- 14 was one of these real fancy, easy pop-up
- 15 things.
- 16 Q. Anything else?
- 17 A. She used to give me -- I think for my
- 18 birthday she bought a bunch of scotch that
- 19 we took to the beach, so --
- 20 Q. Do you remember your birthday of what year?
- 21 A. When I turned forty.
- 22 Q. Turned forty?
- 23 Anything else?

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 274

- 1 A. You know, those gifts are alcohol related.  
 2 I just -- No, I don't recall.  
 3 Q. Did Hope ever have any conversations with  
 4 you where she expressed her concern over  
 5 your use of Xanax and intake of alcohol as a  
 6 combination?  
 7 A. Yes, I think so.  
 8 Q. Tell me of those conversations, please.  
 9 A. She said I snored at night.  
 10 Q. Anything else?  
 11 A. No, sir.  
 12 Q. Did any of your physicians ever warn you  
 13 against taking Xanax and drinking alcoholic  
 14 beverages?  
 15 A. No, sir.  
 16 Q. Have you ever read any literature that  
 17 indicates one way or another whether you  
 18 should take Xanax and intake alcoholic  
 19 beverages?  
 20 A. Other than what's on the label.  
 21 Q. And what does that label say?  
 22 A. I think it says it can cause drowsiness.  
 23 Q. So there is a warning related to Xanax and

Page 276

- 1 consumed marijuana?  
 2 A. Yes.  
 3 Q. Okay. When was the last time that you used  
 4 marijuana?  
 5 A. I was with Hope when I was still living at  
 6 the house.  
 7 Q. Summer of 2001?  
 8 A. That's correct.  
 9 Q. Sometime before Labor Day 2001?  
 10 A. Yes, sir.  
 11 Q. And it's your testimony under oath that you  
 12 have not used marijuana since September of  
 13 2001.  
 14 A. Yes, sir.  
 15 Q. Before September of 2001, how frequently did  
 16 you use marijuana?  
 17 A. Maybe once in a -- two, three, four, five  
 18 years. I don't know. Very, very, very,  
 19 very, very rare.  
 20 Q. Had you ever been warned or received any  
 21 warning of the use of Xanax, the intake of  
 22 alcohol, the consumption of alcohol and the  
 23 use of marijuana?

Page 275

- 1 the consumption of alcoholic beverages.  
 2 A. If that's what the label says. I don't  
 3 recall the exact verbiage.  
 4 Q. Well, you have been taking Xanax since 1988;  
 5 is that correct?  
 6 A. That's approximate, I would say.  
 7 Q. And there are warning labels attached to  
 8 pill bottles on a regular basis, are there  
 9 not?  
 10 A. There are.  
 11 Q. Have you ever noticed a warning label  
 12 warning against the consumption of alcoholic  
 13 beverages while taking Xanax?  
 14 A. I believe I have.  
 15 Q. Have you ever discussed with any of your  
 16 physicians your habits with regard to  
 17 alcohol or alcoholic beverages?  
 18 A. Habits or --  
 19 Q. Yes.  
 20 A. -- or my consumption of alcohol?  
 21 Q. Your consumption, either one.  
 22 A. No, sir.  
 23 Q. Have you during your marriage to Hope Harbin

Page 277

- 1 A. No, sir.  
 2 Q. You've never read any literature in that  
 3 regard?  
 4 A. No, sir.  
 5 Q. Mr. Harbin, during your marriage to Hope  
 6 Harbin and before your separation, because I  
 7 recognize you are still married, but before  
 8 your separation in September, Labor Day of  
 9 2001, did you and Hope have ever any  
 10 physical altercations?  
 11 A. Before our separation?  
 12 Q. Yes.  
 13 A. Yes.  
 14 Q. Tell me of each one of those that you recall  
 15 and the circumstances surrounding the  
 16 altercation.  
 17 A. The first time was before we were married.  
 18 And we were at a party, and there were some  
 19 people smoking marijuana, and I smoked some  
 20 marijuana. I think I was twenty-eight,  
 21 twenty-nine. And I came inside from the  
 22 party and bent over Hope and asked her if  
 23 she'd like for me to get her a drink, and



Deposition of Michael Harbin J. II)

April 2, 2002

Page 278

1 she turned around and cold-cocked me in the  
 2 face and laid me out on the floor.  
 3 Q. And did you take that as her displeasure  
 4 with your intake of marijuana?  
 5 A. I took that as what the hell is this girl  
 6 hitting me in front of these people.  
 7 Q. Did you ask her for an explanation of why  
 8 she had struck you?  
 9 A. I did after about ten minutes.  
 10 Q. And what did she say? What do you recall  
 11 her having said? How about that.  
 12 A. I don't know. My nose was bleeding and my  
 13 eyes were all running and the guys had run  
 14 out the door, and I don't -- I don't recall  
 15 other than the fact, yeah, don't do that  
 16 around me.  
 17 Q. Okay. What happened next? When was the  
 18 next altercation that you recall?  
 19 A. The next time, it was Thanksgiving. What  
 20 year -- Michael was young. He was still in  
 21 a car seat. And Hope was very adamant about  
 22 going to Tuscaloosa to have Thanksgiving  
 23 dinner like at six o'clock at night, and I

Page 279

1 was saying that that's a lot of traveling to  
 2 do in one night with a small child just to  
 3 go have dinner with your sister. And we  
 4 were going up I-65 and I was madder than  
 5 hell, and I was not talking to Hope. And we  
 6 turned onto 459, and she said, well, are you  
 7 not going to talk to me. And I said, Hope,  
 8 this is -- Little Michael was maybe six  
 9 months old at the time. And I said, this is  
 10 crazy, and she went off and turned around  
 11 and knocked the hell out of me while I was  
 12 driving the car. And I slammed on the  
 13 brakes slowly. Well, I slowed down.  
 14 Q. Slammed on the brakes slowly.  
 15 A. I slowed the car down, got off on the exit,  
 16 and turned around and drove back to  
 17 Montgomery and told her don't ever -- And I  
 18 picked up my car phone, and I said, don't  
 19 ever, ever, ever hit me again, because that  
 20 was the second time she had punched me, and  
 21 Hope has got a mean right hook.  
 22 Q. Obviously.  
 23 Any other occasions?

Page 280

1 A. Yes. When we were going through the divorce  
 2 or were in the environment that we're in  
 3 now, Hope had called me one day --  
 4 Q. That is after your separation now? I want  
 5 to get everything before your separation,  
 6 Labor Day 2001.  
 7 A. Right. Let's see.  
 8 Q. You've told us of two occasions. Anything  
 9 else?  
 10 A. She has charged at me a couple of times but  
 11 hasn't actually hit me. I've been able to  
 12 back away.  
 13 Q. Any other altercations?  
 14 A. Physical or --  
 15 Q. Physical altercations. I assume you have  
 16 had your yelling and screaming.  
 17 A. Yeah. But as far as any -- any more punches  
 18 in the face other than those two times, no.  
 19 Q. Now, you said that you and Hope had started  
 20 having marital difficulties sometime in the  
 21 past and that you were angry with Hope not  
 22 working and contributing financially to the  
 23 family.

Page 281

1 A. Correct.  
 2 Q. And that that had precipitated some of your  
 3 disagreements and had led to your problems  
 4 with regard to the marriage. Is that a fair  
 5 summation?  
 6 A. That's part of it, yes.  
 7 Q. Okay. Tell me what else makes y'all or made  
 8 y'all incompatible and broke down your  
 9 marital relationship.  
 10 A. John, when Hope and I got married, she was  
 11 three months pregnant.  
 12 Q. And you had lived together for how many  
 13 years or how long a period of time?  
 14 A. Maybe a year.  
 15 Q. Okay. And had planned to get married.  
 16 A. We never had any definite plans.  
 17 Q. Okay.  
 18 A. And I did what I thought was the right thing  
 19 to do and took Hope off to Rome, got married  
 20 in St. Peter's Basilica and came back, was  
 21 going to try to live a happy and wonderful  
 22 life. And the product of our marriage was a  
 23 beautiful son, Michael. And Anna came

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 282

1 along, another wonderful product of our  
2 relationship. Not a product, but just a  
3 wonderful gift.

4 And as the years developed after Anna  
5 was born -- and I'm leading up to your  
6 question or to answering your question --  
7 Hope was very emphatic about staying at home  
8 and raising the children. And at the time I  
9 was financially -- financially could afford  
10 to have a nanny, so to speak, come into our  
11 house four days out of the week to keep the  
12 children while Hope worked on a limited,  
13 part-time basis down at Harbin's.

14 As the finances grew a little bit  
15 tighter and the children got older and they  
16 got into school, I asked Hope, all right,  
17 we've got this private education that's  
18 going to be coming down the pipe pretty  
19 soon, and I'm going to need you to do some  
20 more help on the financial side. And she  
21 was very, very, very, and still is, emphatic  
22 about being home for the children at three  
23 o'clock or four o'clock, whenever they get

Page 284

1 Q. Are they that spaced out?

2 A. I'm just personally out of that scene  
3 nowadays. I don't like to do that anymore  
4 and haven't in several years. And I think  
5 because Hope would like to continue to do  
6 that and I did not, that was another wedge  
7 within our relationship.

8 Q. You have filed a counterpetition for  
9 divorce, and you have alleged in your  
10 counterpetition that y'all are incompatible  
11 and that further attempts at reconciliation  
12 are futile and not in the best interest of  
13 either of you. There's been a breakdown in  
14 the marital relationship.

15 Have you told me all of the facts that  
16 led you to the conclusion that you swore to  
17 in your counterpetition?

18 A. Yes.

19 Q. Okay. That's the reason -- What you've just  
20 expressed is why y'all are incompatible and  
21 why you want a divorce, correct?

22 A. Yes. We're incompatible.

23 Q. And you would agree with me that's a

Page 283

1 out of school.

2 And as these bills began to mount --  
3 And you know what the costs are in these  
4 schools. In February I wrote a check to the  
5 Academy for \$21,000. And, yes, I began to  
6 resent her not willing to help. I was  
7 carrying the burden of the business --

8 Q. And is that --

9 A. -- the household, the beach property,  
10 private school, the whole nine yards. And  
11 that was one of the contributing -- main  
12 contributing factors was helping.

13 Q. Anything else?

14 A. Bringing on the demise of our relationship.

15 Q. Anything else?

16 A. Other than just continued somewhat breakdown  
17 of our personal agendas. Hope has a very  
18 strong social agenda. I don't. She likes  
19 to go to balls and stuff, which nothing is  
20 wrong with that. People -- I grew up in  
21 Montgomery, and, you know, there's a ball  
22 about every other week in this town, but  
23 personally I'm just totally --

Page 285

1 conclusion, and the facts that led to that  
2 conclusion are what you've testified to  
3 earlier today, correct?

4 A. You lost me on that. What do you mean?  
5 MR. MINOR: He's asking are there  
6 any other facts.

7 Q. Yeah. Is there anything else? I don't want  
8 to hear something for the first time from  
9 the witness stand.

10 MR. MINOR: Any other facts that's  
11 caused the breakdown of this  
12 marriage. Anything else that's  
13 a problem between you and Hope  
14 that you haven't told him  
15 about.

16 A. Well, just prior to me moving out, going  
17 back to the physical stuff.

18 Q. We discussed those two occasions. I'm going  
19 to now discuss after your separation. I'm  
20 going to now ask you questions after the  
21 separation.

22 A. Okay. Well --

23 Q. Is there anything else, though, that you

Deposition of Michael Harbin (J. II)

April 2, 2002

Page 286

1 want to tell me that occurred --  
 2 A. Before I --  
 3 Q. -- before Labor Day 2001 that gives rise to  
 4 your conclusion that you're incompatible and  
 5 that there's been an irretrievable breakdown  
 6 of this marital relation?  
 7 A. Prior to me moving out, Hope was very  
 8 animated, violent, and one night Hope just  
 9 went wild within the house. She was  
 10 throwing stuff at me, screaming profanity,  
 11 trying to call Jackie, leaving messages on  
 12 her cell phone, throwing telephones at me.  
 13 Hope has got a great arm to break a cordless  
 14 phone.  
 15 Q. Was she accusing you at that time of having  
 16 an affair with Jackie?  
 17 A. I had already admitted it.  
 18 Q. Oh, okay. So this was after you admitted to  
 19 the affair.  
 20 A. Right. Right. And --  
 21 Q. Okay. But before you moved from the home.  
 22 A. Right.  
 23 Q. Okay.

Page 287

1 A. And Hope was going to go to Jackie's house,  
 2 I believe, and -- I believe that's what  
 3 happened. Anyway, she jumped in her car,  
 4 took off. I ran upstairs and grabbed the  
 5 children because they were in my daughter's  
 6 bedroom crying. And I said Anna, Michael,  
 7 pack your little -- we're going to pack your  
 8 little suitcases and we're going to spend  
 9 the night with my mother tonight. And so I  
 10 grabbed the children, and we left the house.  
 11 Q. You took them to your mother's house?  
 12 A. Took them to my mother's house.  
 13 Q. Okay.  
 14 A. And I had tried to call Hope on her cell  
 15 phone and was unable to get her to tell her  
 16 where we were, and she never did call till I  
 17 think it was the next day.  
 18 Q. Do you remember when this was?  
 19 A. I don't recall the exact date.  
 20 Q. Weeks before you actually -- or days before  
 21 you actually moved out Labor Day?  
 22 A. I think it was maybe a couple of weeks.  
 23 Q. Any other occasions during that what I'll

Page 288

1 call a stressful period from when you  
 2 admitted to having an affair until you  
 3 actually vacated the home?  
 4 A. Every day was very stressful.  
 5 Q. Right. That's what I said, I'll call that a  
 6 stressful period.  
 7 A. Yeah.  
 8 Q. I didn't want to even leave that to you to  
 9 call it that.  
 10 A. Okay.  
 11 Q. But from mid --  
 12 MR. MINOR: He's saying any other  
 13 violence --  
 14 Q. Any other violence or --  
 15 MR. MINOR: -- during that period  
 16 from the time you told her till  
 17 you moved out.  
 18 Q. All right. I recognize that there were  
 19 constant arguments like --  
 20 A. Well, there was another time when she had --  
 21 And I can't recall if this was before or  
 22 after my admission. It might have been  
 23 after. She had tried to take my car and go

Page 289

1 see Jackie at her house. And I said, Hope,  
 2 you're upset. This was in the morning time,  
 3 and the children were at my sister's house.  
 4 And I said, Hope, please don't go, just calm  
 5 down. And she jumped in her car and backed  
 6 out of the driveway at a high rate of speed,  
 7 parked her car on the street, and then came  
 8 in and grabbed my car keys and tried to take  
 9 my car. I said, Hope, calm down. And she  
 10 was in the car, in the driver's side of the  
 11 car -- my car in the driver's seat, and she  
 12 was trying to crank the car up to leave.  
 13 And I said, Hope, don't go, just calm down.  
 14 And I reached in to get the key and try to  
 15 remove it from the ignition, and she bit me  
 16 on the elbow. I pulled my arm back, and she  
 17 slammed the door. I had the key. And she  
 18 called 911 and called the police and said I  
 19 was restraining her.  
 20 Q. Anything else?  
 21 A. We were at the beach. She had come back  
 22 from training down in Orlando or Miami or  
 23 something like that. And we had -- I had



## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 290

1 had the children while she was training, and  
 2 we had gone to Panama City to pick her up at  
 3 the airport. And she came back and became  
 4 very agitated and -- while the children were  
 5 asleep, thank goodness. And we were sitting  
 6 by the pool, and Hope had a glass in her  
 7 hand and I was sitting in a chair, and she  
 8 threw the glass at me, and it shattered on  
 9 the deck of the pool.

10 Q. Anything else?

11 A. I think that's about it.

12 Q. To say that she was emotionally upset by  
 13 your affair with Jackie Parks would be  
 14 somewhat of an understatement, would it not?

15 A. To that extent, yes.

16 Q. Now, since your separation, have you had  
 17 physical altercations?

18 A. Yes.

19 Q. Tell me those in chronological order, the  
 20 order beginning at the time of your  
 21 separation, Labor Day 2001, going to now.

22 A. The first time, she had called me -- she  
 23 called me at work and said she had a flat

Page 292

1 paper towels and Bactine trying to keep --  
 2 stop the bleeding.  
 3 Q. Okay. Anything else?  
 4 A. The next time, Hope came over to my house,  
 5 and I let her inside. And she was charging  
 6 at me. Jackie had called the house. Hope  
 7 had spoken to her on the phone for two  
 8 seconds. She threw the phone down and then  
 9 lunged at me. I grabbed Hope's arms. I  
 10 said, stop it and leave. We were in my  
 11 living room. I guess that's what you'd call  
 12 it. I don't know what -- But we were  
 13 standing in there. I told her to leave.  
 14 And Hope was like that (indicating), coming  
 15 at me, and I grabbed her arms, and we swung  
 16 up that way to keep her from coming for my  
 17 face.

18 I have a rug down that has no pad. The  
 19 rug slipped. We fell on the floor. She was  
 20 spitting, cussing. She got her key, and she  
 21 was -- in her hand. Do you see that scar  
 22 right there (indicating)? She was able to  
 23 get me across the neck with her key. I was

Page 291

1 tire and would I come help her because she  
 2 had groceries in the car and she was at Big  
 3 10 on Zelda Road. And I said, yes, I would.  
 4 So I left the office and met her at Big 10  
 5 Tire, put the groceries in the car. I took  
 6 her to her house. We went inside. She  
 7 asked me to try to help her get a computer  
 8 program working where she could fax from her  
 9 computer. I poked around on it a little bit  
 10 trying to get it to work, and I really  
 11 couldn't do anything. And as I was going  
 12 downstairs, we started getting into a little  
 13 conversation about everything that was going  
 14 on. And the next thing I know, I'm standing  
 15 at the back door about to leave and Hope and  
 16 I are yelling at each other, and she reaches  
 17 out and grabs me by the face and yanks me  
 18 like that (indicating).

19 Q. Did you have to have any medical attention?

20 A. I stayed there for about another thirty  
 21 minutes because I was bleeding and I had to  
 22 go back to work. And I didn't go to a  
 23 doctor or anything, no, but I sat there with

Page 293

1 holding her arms down trying to get her to  
 2 drop the key, her Suburban key. I mean, it  
 3 was just like something you see on MPD. She  
 4 was wrestling with me.

5 Q. That was at your home on Fairview.

6 A. On Fairview.

7 I held her down. I kept saying, stop  
 8 this, stop this, we -- this is just awful.  
 9 She was spitting, trying to kick me in the  
 10 groin. Finally she -- after about ten  
 11 minutes and every bit of energy I had, she  
 12 finally calmed down and she left the house.

13 Q. Okay. Did you have to have medical  
 14 attention?

15 A. No.

16 Q. Next?

17 A. Next was just last week or two weeks ago.  
 18 My dog was missing. Hope had gone down  
 19 to -- had gone to the lake to a birthday  
 20 party. And I was -- I had called the house  
 21 to see if they were there before I came home  
 22 to see if my -- I had a black lab that's  
 23 been missing -- that was missing. Nobody

Deposition of Michael Harbin (J. II)

April 2, 2002

Page 294

1 answered. So I went by the house to see if  
 2 he had possibly -- possibly had shown back  
 3 up.  
 4 Hope -- I turned in the driveway, and  
 5 when I turned in the driveway, I saw Hope's  
 6 car there. There were no lights on in the  
 7 house, and they had just pulled up. So I  
 8 went down the driveway and rolled down the  
 9 window and asked her if the dog was there,  
 10 and she said no. I said, has anybody  
 11 called, and she said no. She goes, but I'll  
 12 go inside and check.  
 13 She went inside and came back down and  
 14 said no one had called about the dog but  
 15 that she had another interesting call. And  
 16 that interesting call led to Hope grabbing  
 17 me on the side of the face here  
 18 (indicating) --  
 19 Q. Who was the interesting call from? I'm  
 20 sorry. I don't mean to interrupt you.  
 21 A. It was from Jackie. Hope had been calling  
 22 her and Jackie had returned her call, and  
 23 unfortunately I was there when Hope had

Page 295

1 checked her messages. And I was standing on  
 2 the patio, and I said -- she goes, but I had  
 3 another interesting call. And I said, from?  
 4 And then (indicating). She came down,  
 5 grabbed me here (indicating). I pulled  
 6 away.  
 7 Q. This was outside of the home on Augusta?  
 8 A. This was outside on the patio.  
 9 Q. Okay.  
 10 A. The children ran inside. Hope said, get off  
 11 my property. I'm calling 911 right now. I  
 12 said, I'm leaving; don't call anybody.  
 13 And --  
 14 Q. Well, did you leave?  
 15 A. I left. I got in the car and I left. And I  
 16 called the police --  
 17 Q. So each of those --  
 18 You did call the police?  
 19 A. -- and had an incident report done.  
 20 Q. Any others?  
 21 A. Not since then, no.  
 22 Q. All of these post-separation occurrences  
 23 immediately follow either a conversation or

Page 296

1 a message from Jackie Parks, do they not?  
 2 MR. MINOR: Huh-uh (negative  
 3 response).  
 4 A. No.  
 5 Q. They do not?  
 6 MR. MINOR: The first one she had  
 7 a flat tire, and he went and  
 8 helped her.  
 9 MR. HENIG: All right. I know  
 10 that.  
 11 Q. All right. Other than that first one, the  
 12 one at your home on Fairview was as a result  
 13 of a call from Jackie Parks.  
 14 A. That's correct, a call to me.  
 15 Q. Right.  
 16 A. Okay.  
 17 Q. And the next one just a couple of weeks ago  
 18 was a result of a message on Hope's phone  
 19 from Jackie.  
 20 A. Right.  
 21 Q. All right. And those are the three that  
 22 have occurred, the flat tire, the  
 23 occasion --

Page 297

1 A. At my house and then checking on the dog.  
 2 Q. Okay. Any others?  
 3 A. Huh-uh (negative response). And I hope not  
 4 to have any others.  
 5 MR. HENIG: I want to switch  
 6 gears. I'm going to try to get  
 7 everything wrapped up by --  
 8 THE WITNESS: I can stay up --  
 9 well, you know, if we have to,  
 10 but at least maybe till twenty  
 11 till one.  
 12 MR. HENIG: I'm going to get you  
 13 done quicker than that, I hope.  
 14 THE WITNESS: Okay.  
 15 Q. Let me ask you about these Frequent Flyer  
 16 miles. And you're certainly aware that Hope  
 17 had taken some of your Frequent Flyer miles  
 18 or some of the Frequent Flyer miles and  
 19 purchased a round-trip ticket to Europe --  
 20 A. That's correct.  
 21 Q. -- which was delivered, I assume, to your  
 22 home.  
 23 A. That's correct.

Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 298

- 1 Q. And that you kept and did not give to Hope.
- 2 A. The ticket was delivered to my house.
- 3 Q. Right.
- 4 A. When I opened up the envelope, I thought it
- 5 was my Frequent Flyer statement. And I saw
- 6 the ticket, and it was made to Hope to
- 7 Paris. And so I was a little surprised that
- 8 I was unaware of this trip to Paris and
- 9 certainly how could she afford a trip to
- 10 Paris. So I called Delta and found out that
- 11 the ticket had been issued based on my
- 12 Frequent Flyer account.
- 13 Q. Now, where did that Frequent Flyer account
- 14 originate?
- 15 A. I -- Dannelly Field, Montgomery, Alabama. I
- 16 signed the --
- 17 Q. No, no. The Frequent Flyer points. How did
- 18 you originate that account that had Frequent
- 19 Flyer points in it?
- 20 A. Through travel and then through a Delta
- 21 SkyMiles card.
- 22 Q. Okay. Use of a credit card?
- 23 A. Uh-huh (positive response).

Page 299

- 1 Q. Was that a joint credit card?
- 2 A. She had a credit card and I had a credit
- 3 card.
- 4 Q. So some of those miles were generated from
- 5 purchases Hope had made?
- 6 A. Some of those miles probably were generated
- 7 from purchases that she made.
- 8 Q. Okay. But regardless of who paid for the
- 9 card, there was a card in her name and a
- 10 card in your name; is that correct?
- 11 A. That's correct.
- 12 Q. And you paid the household bills?
- 13 A. That's correct.
- 14 Q. Now, were those Frequent Flyer miles all in
- 15 a single account once the credit card was
- 16 closed?
- 17 A. What do you mean? She's got a Frequent
- 18 Flyer account, as do I too.
- 19 Q. That's separate and distinct from yours.
- 20 A. Right, as our two children do, as well.
- 21 Q. Okay. And your Frequent Flyer account is
- 22 made up of miles that you acquired through
- 23 travel on Delta Airlines --

Page 300

- 1 A. Correct.
- 2 Q. -- and through purchases on a Delta SkyMiles
- 3 MasterCard or Visa, one or the other.
- 4 A. American Express.
- 5 Q. American Express.
- 6 Is that an American Express card that
- 7 was in both of your names or in your name
- 8 only?
- 9 A. She was -- The account was in my name, and
- 10 you're able to have what, a joint
- 11 cardholder?
- 12 Q. Right.
- 13 MR. MINOR: Authorized user.
- 14 A. Authorized user. And she had a card in her
- 15 name.
- 16 Q. Okay. And the SkyMiles that were used to
- 17 purchase the round-trip ticket to Paris, did
- 18 that come from an account that was made up
- 19 of Frequent Flyer points that were acquired
- 20 through travel on Delta Airlines and through
- 21 use of the American Express card?
- 22 A. My Frequent Flyer account was made up of
- 23 miles traveled on Delta Airlines and related

Page 301

- 1 airlines and purchases -- points made --
- 2 points credited to the account from
- 3 purchases on the Delta American Express
- 4 SkyMiles card.
- 5 Q. Okay. Now, how many Frequent Flyer points
- 6 do you currently have?
- 7 A. I believe it's maybe 80,000.
- 8 Q. Okay. How many points were used to purchase
- 9 the round-trip ticket?
- 10 A. 50,000.
- 11 Q. Is that part of the 80 or is that in
- 12 addition to the 80?
- 13 A. No, I had 100 and something.
- 14 Q. Okay. And you know that the ticket was not
- 15 used.
- 16 A. That's correct. Mr. Minor still has the
- 17 ticket.
- 18 Q. When you received the ticket, did you give
- 19 it to Mr. Minor?
- 20 A. I did.
- 21 Q. Did you give Mr. Minor any instructions with
- 22 regard to the ticket?
- 23 A. I said hold it.

Deposition of Michael Harbin, Jr. II)

April 2, 2002

Page 302

- 1 Q. Until what occurs?
- 2 A. Until we can try to settle this thing.
- 3 Q. So you would not release the ticket unless
- 4 this entire case was settled; is that
- 5 correct?
- 6 A. That is correct.
- 7 Q. And we didn't settle it, did we?
- 8 A. No, we did not.
- 9 Q. As part of the pendente lite order, you had
- 10 use of the beach home?
- 11 A. That's correct.
- 12 Q. Which is a duplex in Florida?
- 13 A. That's correct.
- 14 Q. Has Hope used the home since your
- 15 separation, Labor Day 2001?
- 16 A. No.
- 17 Q. Have you allowed her to use the home?
- 18 A. Not right now, no.
- 19 Q. And why would you or have you not allowed
- 20 Hope to use the beach home?
- 21 A. Pursuant to our agreement, she has the full
- 22 and exclusive use of the home on Augusta and
- 23 the contents and I have full, exclusive use

Page 303

- 1 of the house in Seagrove.
- 2 Q. The house in Seagrove is a duplex with two
- 3 separate and distinct dwellings attached by
- 4 a single roof, is it not?
- 5 A. It is.
- 6 Q. Describe for me side one and side two of the
- 7 duplex.
- 8 A. Each side has three bedrooms, two baths.
- 9 Q. Any other rooms other than the three
- 10 bedrooms and two baths on each side?
- 11 A. There's a common area. There's a
- 12 combination den/living room, and there's a
- 13 kitchen.
- 14 Q. Are both sides of equal size square footage?
- 15 A. I believe so.
- 16 Q. Do you rent both sides?
- 17 A. I do.
- 18 Q. And if I'm not mistaken, you are
- 19 depreciating both sides on your personal
- 20 income tax return as though they are
- 21 separate dwellings and separate rental
- 22 properties; is that correct?
- 23 A. I'd have to look at my schedule. I don't

Page 304

- 1 know.
- 2 Q. The rental company is reporting the income
- 3 to you on the units separately, is it not?
- 4 A. Yes, they are.
- 5 Q. How do they designate the separate units?
- 6 A. As far as what they name them or --
- 7 Q. Yeah. Side A and B or one and two or --
- 8 A. East and West.
- 9 Q. East and West. Okay.
- 10 So if I looked on your depreciation
- 11 schedule on your personal income tax and
- 12 under rental property there was an East and
- 13 a West, then you would agree that they're
- 14 being treated as two separate and distinct
- 15 properties for depreciation purposes on your
- 16 federal income tax returns.
- 17 A. You're asking me an accounting question
- 18 that -- That's how they do it.
- 19 Q. I'm asking you about your return.
- 20 A. That's how they do it. That's why I pay
- 21 them to set it up.
- 22 Q. Do they have separate entrances?
- 23 A. They have separate entrances inside -- to

Page 305

- 1 gain access inside. They have a common gate
- 2 to go to the pool. And up till a year ago,
- 3 they had common decks with one stair down to
- 4 the pool.
- 5 Q. But they now have separate decks.
- 6 A. Separate stairs. I added another set of
- 7 stairs on the east side.
- 8 Q. Excuse me. Are the decks divided by any
- 9 structure?
- 10 A. Each deck has a gate going out onto the
- 11 common deck that goes down to the pool.
- 12 Q. Okay. Are there any interior walls that
- 13 join the two structures, the two dwellings?
- 14 A. That join them?
- 15 Q. Yeah, interior doorways. I'm sorry. I said
- 16 wall. I know they have a common interior
- 17 wall. Is there a common interior doorway?
- 18 A. There's a common interior storage shed
- 19 doorway that connects the two storage sheds
- 20 and which falls under the same roof, but as
- 21 far as moving from one living quarters to
- 22 the next, no.
- 23 Q. You have to go outside to do that. You



## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 306

- 1 cannot do that from inside.
- 2 A. That's correct.
- 3 Q. Okay. Do they both have fully equipped
- 4 kitchens?
- 5 A. They do.
- 6 Q. Both have refrigerators, dishwashers?
- 7 A. They do.
- 8 Q. Stoves?
- 9 A. They do.
- 10 Q. Do they have separate air-conditioning
- 11 units?
- 12 A. They do.
- 13 Q. Do you receive separate power bills for the
- 14 two units?
- 15 A. Separate -- Totally separate utilities for
- 16 both of them.
- 17 Q. Separate water, power, cable television?
- 18 A. Water is not separate.
- 19 Q. One single water bill.
- 20 A. One single water bill for both units.
- 21 Q. Okay. Any gas appliances?
- 22 A. Uh-huh (positive response), a pool heater.
- 23 Q. Is there a single gas bill?

Page 307

- 1 A. There is.
- 2 Q. So you have a single water bill and a single
- 3 gas bill.
- 4 A. Correct.
- 5 Q. But everything else is totally separate.
- 6 A. Separate phone and separate power.
- 7 Q. Okay. Television, separate cable?
- 8 A. Separate cable; that's correct.
- 9 Q. Two separate bills.
- 10 A. Correct.
- 11 Q. During the year 2001, was that unit for
- 12 sale, listed for sale?
- 13 A. I don't believe so. I -- It might have been
- 14 partially, but the listing agreement had
- 15 expired.
- 16 Q. When was it listed for sale?
- 17 A. The day I closed on it.
- 18 Q. Which was? I'll take the month and year.
- 19 A. '97.
- 20 Q. Okay. And so you listed it for sale
- 21 immediately?
- 22 A. Uh-huh (positive response).
- 23 Q. That's a yes?

Page 308

- 1 A. Yes, sir.
- 2 Q. Did you have any offers to purchase it?
- 3 A. One semi. It was if owner would finance,
- 4 and I said no.
- 5 Q. Now, you said there was a second mortgage on
- 6 that unit that was placed on the unit in
- 7 September of 2001 or thereabouts?
- 8 A. Yes, sir.
- 9 Q. And there was an appraisal done at that
- 10 time; is that correct?
- 11 A. I believe the appraisal was done in May.
- 12 Q. In May?
- 13 But it was in anticipation of financing
- 14 a second mortgage or the second mortgage?
- 15 A. Yes, sir.
- 16 Q. I'm asking the question.
- 17 A. Yeah. Yeah.
- 18 Q. Is that why the appraisal was performed?
- 19 A. Yes, sir.
- 20 Q. Do you agree with the appraised value?
- 21 A. You know, everything down there is -- I
- 22 agree with it.
- 23 Q. Okay. Is it high or low in your opinion as

Page 309

- 1 an owner?
- 2 A. Based on the land value, I think it's
- 3 probably dead on the money. Based on the
- 4 income level, it's probably too high.
- 5 Q. And do you think it's appreciated -- the
- 6 duplex has appreciated in value since the
- 7 appraisal in May of 2001?
- 8 A. I -- Based on what's happened in the economy
- 9 since then, I don't know. It might have
- 10 even dipped a little bit.
- 11 Q. So your opinion is that the appraisal would
- 12 certainly be no higher if it was
- 13 re-appraised today.
- 14 A. I wouldn't think it would be.
- 15 Q. Okay.
- 16 MR. HENIG: Let me talk with Hope
- 17 for just a second. That may be
- 18 all of the questions that I
- 19 have.
- 20 (Brief recess.)
- 21 Q. (Mr. Henig continuing) Mr. Harbin, let me
- 22 ask you just a couple of brief follow-up
- 23 questions.



Deposition of Michael Harbin J. II)

April 2, 2002

Page 310

1 Mr. Harbin, you recognize that Hope has  
 2 exclusive use of the home on Augusta; is  
 3 that correct?  
 4 A. That's correct.  
 5 Q. Have you since September of 2001 removed any  
 6 mail from the Augusta mailbox?  
 7 A. No.  
 8 Q. You understand you're under oath.  
 9 A. My son did the other day, but I did not.  
 10 Q. What did your son remove from the mailbox  
 11 and give to you?  
 12 A. Anna's soccer schedule.  
 13 Q. And gave it to you?  
 14 A. He gave it to Anna, I believe. I was not  
 15 even out of the car, I don't think. Well, I  
 16 was out of the car because they went and fed  
 17 the cat and I stood there and watched them.  
 18 But he got the mail out, stuck it under the  
 19 porch, and he was going through it, and he  
 20 goes, Anna, you've got a letter, I believe.  
 21 I mean, it's insignificant. And he opened  
 22 it or Anna opened it or Anna gave it to me  
 23 and I opened it, and it was the soccer

Page 311

1 schedule for Anna's soccer stuff.  
 2 Q. What was the occasion for you to be with the  
 3 children at the Augusta house the other day?  
 4 A. Hope was in Paris.  
 5 Q. And what was the occasion for you being at  
 6 the house with the children?  
 7 A. She had left no instructions on who was  
 8 going to feed the cat, Willow. And I told  
 9 the children we needed to go by there and  
 10 check on the cat because when they were in  
 11 West Palm Beach the week before that, my  
 12 mother and I went by to check on the cat,  
 13 and both occasions that I was there, there  
 14 was no food for the cat or water. And we  
 15 fed the cat, and on the occasion that my mom  
 16 was there, she pulled the mail out and stuck  
 17 it on the porch for Hope.  
 18 Q. Have you removed any other mail from  
 19 Hope's -- any mail at all from Hope's  
 20 mailbox?  
 21 MR. MINOR: Object to the form.  
 22 Q. Strike the word "other."  
 23 Have you personally removed any mail

Page 312

1 from Hope Harbin's mailbox since your  
 2 separation, since you left that home Labor  
 3 Day 2001?  
 4 MR. MINOR: He's already testified  
 5 he has not.  
 6 MR. HENIG: I know. I want to  
 7 make absolutely certain he  
 8 understands my question. If  
 9 his testimony is no, then he  
 10 can say no, and we'll move on  
 11 to the next question.  
 12 A. Well, I'm trying to make absolutely sure.  
 13 Q. That's what I want you to do.  
 14 A. Soccer schedule came out. And there was an  
 15 occasion when Hope was out of town, and I  
 16 went by to check on the animals. And I  
 17 checked her mail to see if anybody was  
 18 putting it up, and there wasn't. And she  
 19 thought I was down in Florida, and I said,  
 20 no, I've been in town. I said, I saw your  
 21 mail and no one has been getting it. I  
 22 can't recall if there was something in there  
 23 for me or not. I'm going to say no, I

Page 313

1 don't -- I know the soccer schedule came  
 2 out.  
 3 Q. Do you have the soccer schedule at your  
 4 home?  
 5 A. My office.  
 6 Q. Okay.  
 7 A. And I've offered to give her copies of it,  
 8 but she refuses to take it from me. She  
 9 says she's going to call the coaches and get  
 10 those.  
 11 Q. If you would be kind enough to give  
 12 Mr. Minor or just fax me a copy of the  
 13 soccer schedule and I'll make sure she gets  
 14 it.  
 15 A. Well, I'm going to a soccer thing tonight.  
 16 As an adult, don't you think I can just hand  
 17 it to her?  
 18 Q. Be fine with me.  
 19 MR. MINOR: Just get it to me.  
 20 Just get it to me and I'll get  
 21 it to John.  
 22 Q. Is Jackie Parks currently employed at  
 23 Harbin's or working at Harbin's?

## Deposition of Michael Harbin (Vol. II)

April 2, 2002

Page 314

- 1 A. She's working at Harbin's, yes.  
 2 Q. What job does she have at Harbin's?  
 3 A. She does design work for the company.  
 4 Q. And what is her current salary?  
 5 A. She's not being paid. She's reducing her  
 6 indebtedness to the company.  
 7 Q. How much does Jackie Parks owe  
 8 Harbin's-Stern Brothers? Or is it Harbin's,  
 9 Inc.? You tell me who she owes and how  
 10 much.  
 11 A. Harbin-Stern Brothers. And it was roughly a  
 12 couple of thousand, and we're keeping track  
 13 of her time and we're debiting it from her  
 14 balance.  
 15 Q. And her time is being debited at what rate  
 16 per hour?  
 17 A. I think it's \$35 an hour. I think it is.  
 18 Q. Have you represented to anyone that you are  
 19 a resident of the state of Florida?  
 20 A. I have.  
 21 Q. When did you become a resident of the state  
 22 of Florida?  
 23 A. I'm not. I said I had applied to be a

Page 315

- 1 resident of the state of Florida.  
 2 Q. When did you apply for residency in the  
 3 state of Florida?  
 4 A. I haven't.  
 5 Q. Do you know how in the world you would even  
 6 go about applying for residency?  
 7 A. Yeah.  
 8 Q. How would you do that?  
 9 MR. MINOR: That's the fourth  
 10 question. You said you only  
 11 had three.  
 12 MR. HENIG: I understand.  
 13 A. I know where you're going with this.  
 14 Q. He's intrigued me with this, and I'm just  
 15 going to need to follow this a little bit.  
 16 I want to make sure we've --  
 17 A. You go to the Walton County Courthouse. You  
 18 tell them how many times you stay in the  
 19 state of Florida. You apply for a Walton  
 20 County -- You apply for a Florida driver's  
 21 license. If you don't have a primary  
 22 residence elsewhere, you can consider that a  
 23 homestead in Florida. But have I done that?

Page 316

- 1 No.  
 2 Q. Okay. Have you told people that you have?  
 3 A. One person.  
 4 Q. Did you tell your wife, Hope Harbin, that  
 5 you did?  
 6 A. I told Hope that.  
 7 Q. And why did you tell Hope that you had  
 8 become a Florida resident?  
 9 A. I didn't tell her I had become a Florida  
 10 resident. I said, I'm almost on the verge  
 11 of becoming a Florida resident and applying  
 12 to become a Florida resident because I've  
 13 been going down there so much. On weekends  
 14 that I don't have the children, I go to the  
 15 beach. On weekends I do have the children  
 16 that they would like to go, I go to the  
 17 beach. Sitting in a two-bedroom cottage on  
 18 Fairview with fire trucks going by every day  
 19 is a little unnerving.  
 20 Q. But you have taken no steps to apply for  
 21 residency in the state of Florida?  
 22 A. No, not yet.  
 23 Q. Do you still have an Alabama driver's

Page 317

- 1 license?  
 2 A. I do.  
 3 Q. Have you applied for a Florida driver's  
 4 license?  
 5 A. No, sir.  
 6 Q. Do you intend to move to the state of  
 7 Florida after this divorce is completed?  
 8 A. No.

9 MR. HENIG: That's all the  
 10 questions I have. You can  
 11 answer any of Mr. Minor's  
 12 questions.

13 THE WITNESS: Okay.

14 MR. MINOR: I don't have any.

15 \*\*\*\*\*

16 FURTHER DEPONENT SAITH NOT

17 \*\*\*\*\*

18 REPORTER'S CERTIFICATE

19 STATE OF ALABAMA:  
 20  
 21  
 22  
 23

Deposition of Michael Harbin JI. II)

April 2, 2002

Page 318

1 MONTGOMERY COUNTY:

2 I, Gina L. Haislip, Registered

3 Professional Reporter and Commissioner for the  
4 State of Alabama at Large, do hereby certify that I  
5 reported Volume II of the deposition of:

6 MICHAEL G. HARBIN, JR.

7 who was first duly sworn by me to speak the truth,  
8 the whole truth and nothing but the truth, in the  
9 matter of:

10 The marriage of

11 HOPE DUNCAN HARBIN

12 and

13 MICHAEL G. HARBIN, JR.,

14 Husband & Wife.

15 In the Circuit Court for

16 Montgomery County, Alabama

17 Domestic Relations Division

18 Civil Action Number

19 DR-2001-1310

20 on Tuesday, April 2, 2002.

21 The foregoing 144 computer printed pages

22 contain a true and correct transcript of the

23 examination of said witness by counsel for the

Page 319

1 parties set out herein. The reading and signing of  
2 same is hereby waived.

3 I further certify that I am neither of  
4 kin nor of counsel to the parties to said cause,  
5 nor in any manner interested in the results  
6 thereof.

7 This 11th day of April 2002.

8

9

10

-----  
Gina L. Haislip, Registered  
Professional Reporter and  
Commissioner for the State  
of Alabama at Large.

11

12

13

14

15

16

17

18

19

20

21

22

23